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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–14–0049; FV14–925–3]

Grapes Grown in a Designated Area of Southeastern California; Order Amending Marketing Order 925

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Agreement and Order No. 925 (order), which regulates the handling of table grapes grown in a designated area of southeastern California. The amendments approved by producers in the referendum were proposed by the California Desert Grape Administrative Committee (Committee), which is responsible for the local administration of the order. The new amendments to the order will increase term lengths for Committee members and alternates from one to four fiscal periods and allow new members and alternates to agree to accept their nominations prior to selection by the Secretary. These amendments are intended to increase the Committee's effectiveness and bolster industry participation in Committee activities. The amendment proposed by the Agricultural Marketing Service (AMS) that would add authority for periodic continuance referenda was not approved in the referendum.

DATES: This rule is effective August 10, 2016.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Geronimo.Quinones@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 925, both as amended (7 CFR part 925), regulating the handling of table grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering table grapes grown in southeastern California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the order as proposed by the Committee could appropriately be accomplished through informal rulemaking.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on November 5, 2013.

A proposed rule soliciting comments on the proposed amendments was issued on June 1, 2015, and published in the **Federal Register** on June 5, 2015 (80 FR 32043). No comments were received. A proposed rule and referendum order was issued on October 1, 2015, and published in the **Federal Register** on October 7, 2015 (80 FR 60570). This document directed that a referendum among table grape producers be conducted during the period of January 21, 2016 through February 4, 2016, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of table grapes represented by voters in the referendum. The amendments to increase the length of the term of office for members and to allow members to accept their nominations prior to selection, which were recommended by the Committee were favored by 100 percent of the growers voting in the referendum. The number of votes on the third amendment, which was proposed by AMS, were exactly split 50 percent in favor and 50 percent opposed.

The amendments included in this final rule will: (1) Increase the length of the term of office for Committee members and alternates from one to four fiscal periods, and (2) allow new members and alternates to agree to accept their nominations prior to selection by the Secretary.

The third amendment recommended by AMS concerning periodic continuance referenda was not approved by producers in referendum.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are approximately 12 handlers of southeastern California table grapes who are subject to regulation under the marketing order and approximately 38 table grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,500,000 and small agricultural producers are defined as those whose annual receipts are less than $750,000 (13 CFR 121.201).

Seven of the 12 handlers subject to regulation have annual table grape sales of less than $7,500,000 according to USDA Market News Service and Committee data. Based on information from the Committee and USDA's Market News Service, it is estimated that at least 9 of the 38 producers have annual receipts of less than $750,000. Thus, it may be concluded that a majority of table grape handlers regulated under the order and about 9 of the producers could be classified as small entities under SBA definitions.

The amendments will provide the Committee with authority to increase the term length for members and alternates from one to four fiscal periods and allow new members and alternates of the Committee to agree to accept their nominations before the selection process begins.

The Committee's proposed amendments were unanimously recommended at a public meeting on November 5, 2013.

The Committee believes these changes represent the needs of the Committee and industry. No economic impact is expected from these amendments because they do not establish any regulatory requirements on handlers, nor do they contain any assessment or funding implications. There is no change in financial costs, reporting, or recordkeeping requirements.

Alternatives to these proposals included making no changes at this time. However, the changes are necessary to improve administration of the order to reflect current business practices. Also, streamlining the nomination and selection process reduces the time required for completing the process annually, which would provide new members and alternates the opportunity to learn the details of the Committee's operations and business during their tenure.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the termination of the Letter of Acceptance was previously submitted to and approved by the Office of Management and Budget (OMB). As a result, the current number of hours associated with OMB No. 0581–0189, Generic Fruit Crops, will remain the same: 7,786.71 hours.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meetings, at which these proposals were discussed, were widely publicized throughout the California table grape industry. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. The Committee meetings were public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on June 5, 2015 (80 FR 32043). Copies of the rule were mailed or sent via facsimile to all committee members and grape handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending August 4, 2015, was provided to allow interested persons to respond to the proposals. No comments were received in response to the proposed order amendments.

A proposed rule and referendum order was then issued on October 1, 2015, and published in the **Federal Register** on October 7, 2015 (80 FR 60570). This document directed that a referendum among table grape producers be conducted during the period January 21, 2016, through February 4, 2016, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of table grapes represented by voters in the referendum. Both of the Committee's proposed amendments were favored by 100 percent of those voting in the referendum. The number of votes on the third amendment were exactly split 50 percent in favor of and 50 percent opposed. However, voters representing over two thirds of the volume voted in the referendum, did not favor the third proposed amendment.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Order Amending the Order Regulating the Handling of Grapes Grown in a Designated Area of Southeastern California

(a) *Findings and Determinations Upon the Basis of the Rulemaking Record.*

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby further amended, regulates the handling of table grapes grown in a Designated Area of Southeastern California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of table grapes produced or packed in the production area; and

5. All handling of table grapes produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional Findings.*

The effective date for the amendments shall be 30 days after publication in the **Federal Register**.

(c) *Determinations.* It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of table grapes covered under the order) who during the period January 1, 2015, through December 31, 2015, handled not less than 50 percent of the volume of such table grapes covered by said order, as hereby amended, have executed Marketing Agreements in support of Marketing Order 925, as amended.

2. The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of January 1, 2015, through December 31, 2015, have been engaged within the production area in the production of such table grapes, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of table grapes in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of table grapes grown in a designated area of southeastern California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Associate Administrator on June 1, 2015, and published in the **Federal Register** on June 5, 2015 (80 FR 32043), shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise the first sentence of § 925.21 to read as follows:

§ 925.21 Term of office.

The term of office of the members and alternates shall be four fiscal periods.

* * *

■ 3. Revise § 925.25 to read as follows:

§ 925.25 Qualification and acceptance.

Any person selected as a member or alternate member of the Committee shall, prior to such selection, qualify by filing a qualifications questionnaire advising the Secretary that he or she agrees to serve in the position for which nominated.

Dated: July 5, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–16330 Filed 7–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–FV–14–0069; FV–14–989–2 FR]

Raisins Produced From Grapes Grown in California; Order Amending Marketing Order 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 989 (order), which regulates the handling of raisins produced from grapes grown in California. The amendments approved by producers in the referendum were proposed by the Raisin Administrative Committee (Committee) which is comprised of producers and handlers of raisins and responsible for the local administration of the order. The changes will allow the Committee to borrow from a commercial lending institution and authorize the establishment of a monetary reserve equal to up to one year's budgeted expenses. Allowing the Committee to utilize these customary business practices will help improve administration of the order.

DATES: This rule is effective July 12, 2016.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Geronimo.Quinones@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–

674), hereinafter referred to as the "Act." The applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering raisins produced in California.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the order as proposed by the Committee could appropriately be accomplished through informal rulemaking.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on October 2, 2014.

A proposed rule soliciting comments on the proposed amendments was issued on October 13, 2015, and published in the **Federal Register** on October 16, 2015 (80 FR 62506). Two comments were received. One comment was in support of the amendments. The second comment asked questions about one of the proposals, which were addressed in the proposed rule and referendum order which was issued on February 22, 2016, and published in the **Federal Register** on March 7, 2016 (81 FR 11678). This document also directed that a referendum among raisin producers be conducted during the period of March 9, 2016 through March 23, 2016, to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of raisins represented by voters in the referendum. Both of the amendments were passed by 94 percent of the producers voting and by 93 percent of the volume represented, which exceeds the required two-thirds approval of the producers voting in the referendum or two-thirds of the volume represented in the referendum.

The amendments included in this final rule will authorize the Committee to: (1) Borrow from a commercial lending institution; and (2) Establish a monetary reserve fund equal to up to one year's fiscal expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 3,000 producers of California raisins and approximately 28 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts of less than $750,000 and defines small agricultural service firms as those whose annual receipts are less than $7,500,000 (13 CFR 121.201). Based upon information provided by the Committee, it may be concluded that a majority of producers and approximately 18 California raisin handlers may be classified as small entities.

The amendments will authorize the Committee to borrow from commercial lending institutions and establish a monetary reserve fund equal to one year's budgeted expenses. This will help to ensure proper management and funding of the program.

The Committee's proposed amendments were unanimously recommended at a public meeting on October 2, 2014.

The Committee reviewed and identified a yearly budget that would be necessary to continue program operations in the absence of a reserve pool. Based on this budget, the Committee believes a monetary reserve of approximately $2 million will be sufficient to continue operations. The anticipated $2 million to be accumulated in a monetary reserve will not be accrued in one crop year. It will be spread over several years, depending on expenses, assessment revenue, and excess handler assessments accrued in each crop year. For example: If excess annual handler assessments amount to $400,000, it would take five years to accrue $2 million. Currently, the average excess handler assessments paid yearly over the last six years has been $861,622. During the time in which the monetary reserve fund would be accumulated, the Committee will seek funding from a commercial lending institution.

While this action will result in a temporary increase in handler costs, these costs will be uniform on all handlers and proportional to the size of their businesses. However, these costs are expected to be offset by the benefits derived from operation of the order. Additionally, these costs will help to ensure that the Committee has sufficient funds to meet its financial obligations. Such stability is expected to allow the Committee to conduct programs that will benefit all entities, regardless of size. California raisin producers should see an improved business environment and a more sustainable business model because of the improved business efficiency.

Alternatives were considered to these proposals, including making no changes at this time. However, the Committee believes it is beneficial to have the means and funds necessary to effectively administer the program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, "Vegetable and Specialty Crops." No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

These amendments will not impose any additional reporting or recordkeeping requirements on either small or large California raisin handlers.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the California raisin production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the October 2, 2014, meeting was public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on October 16, 2015 (80 FR 62506). Copies of the rule were mailed or sent via facsimile to all committee members and raisin handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending December 15, 2015, was provided to allow interested persons to respond to the proposals. Two comments were received. One comment was in support of the proposal. The second comment stated that the term "commercial lending institution" is vague and asked for the name of the institution and clarification regarding what constitutes a shortage. The comment also stated that the lending arrangement should be discussed openly. To clarify, as used in the proposal, a shortage would exist when the Committee's cash flow needs exceed the amount of cash available from handler assessments. Regarding open discussion, the Committee establishes a budget and assessment rate annually in meetings that are open to the public. During these meetings, the Committee would discuss any shortages and any available commercial lending opportunities. No changes were made to the proposed amendments as a result of the comments received.

A proposed rule and referendum order was then issued on February 22, 2016, and published in the **Federal Register** on March 7, 2016 (81 FR 11678). This document directed that a referendum among raisin producers be conducted during the period of March 9, 2016, through March 23, 2016, to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of raisins represented by voters in the referendum. Both of the amendments were passed by 94 percent of the producers voting and by 93 percent of the volume represented, which exceeds the required two-thirds approval of the producers voting in the referendum or two-thirds of the volume represented in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Order Amending the Order Regulating the Handling of Raisins Produced From Grapes Grown in California

(a) Findings and Determinations Upon the Basis of the Rulemaking Record

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in California in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of raisins produced or packed in the production area; and

5. All handling of raisins produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make these amendments effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the amendments. These amendments should be in place as soon as possible so the Committee may begin the process of identifying a commercial lending institution if cash flow shortages are identified during their annual budget meeting which will occur prior to the start of their next crop year (August 1, 2016). In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register** and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559.)

(c) Determinations

It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of raisins covered under the order) who during the period August 1, 2014, through July 31, 2015, handled not less than 50 percent of the volume of such raisins covered by said order, as

hereby amended, have signed an amended marketing agreement; and

2. The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of August 31, 2014, through July 31, 2015, have been engaged within the production area in the production of such raisins, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of raisins in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of raisins produced from grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Associate Administrator on October 13, 2015, and published in the **Federal Register** on October 16, 2015 (80 FR 62506), shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise paragraph (c) of § 989.80 to read as follows:

§ 989.80 Assessments.

* * * * *

(c) During any crop year or any portion of a crop year for which volume percentages are not effective for a varietal type, all standard raisins of that varietal type acquired by handlers during such period shall be free tonnage for purposes of levying assessments pursuant to this section. The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. In the event cash flow needs of the committee are above cash available generated by handler assessments, the committee may borrow from a commercial lending institution. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

■ 3. Revise paragraph (a) of § 989.81 to read as follows:

§ 989.81 Accounting.

(a) If, at the end of the crop year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom collected in accordance with § 989.80; *Provided,* That any sum paid by a person in excess of his or her pro rata share of expenses during any crop year may be applied by the committee at the end of such crop year as credit for such person, toward the committee's administrative operations for the following crop year; *Provided further,* That the committee may credit the excess to any outstanding obligations due the committee from such person.

(2) The committee may carry over such excess funds into subsequent crop years as a reserve; *Provided,* That funds already in the reserve do not exceed one crop year's budgeted expenses as averaged over the past six years. In the event that funds exceed one crop year's expenses, funds in excess of one crop year's budgeted expenses shall be distributed in accordance with paragraph (a)(1) of this section. Such funds may be used:

(i) To defray essential administrative expenses (*i.e.,* staff wages/salaries and related benefits, office rent, utilities, postage, insurance, legal expenses, audit costs, consulting, Web site operation and maintenance, office supplies, repairs and maintenance, equipment leases, domestic staff travel and committee mileage reimbursement, international committee travel, international staff travel, bank charges, computer software and programming, costs of compliance activities, and other similar essential administrative expenses) exclusive of promotional expenses during any crop year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any period when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;

(iv) To meet any other such expenses recommended by the committee and approved by the Secretary; and

(v) To cover the necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate; Provided, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

Dated: July 5, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–16335 Filed 7–8–16; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

Equal Credit Opportunity Act (Regulation B)

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 900 to 1025, revised as of January 1, 2016, on page 86, in supplement 1 to part 1002, under "Section 1002.14—Rules on Providing Appraisals and Valuations", remove subsection 14(c).

[FR Doc. 2016–16301 Filed 7–8–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31082; Amdt. No. 3701]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 11, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 11, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 17, 2016.

John S. Duncan,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective 21 JULY 2016*

Unalaska, AK, Unalaska, Takeoff Minimums and Obstacle DP, Amdt 5
Page, AZ, Page Muni, Takeoff Minimums and Obstacle DP, Amdt 2A
Madera, CA, Madera Muni, RNAV (GPS) RWY 12, Amdt 1
Madera, CA, Madera Muni, RNAV (GPS) RWY 30, Amdt 1
Madera, CA, Madera Muni, Takeoff Minimums and Obstacle DP, Amdt 4
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT II), Amdt 25A
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28R, ILS RWY 28R (SA CAT I), ILS RWY 28R (CAT II), ILS RWY 28R (CAT III), Amdt 13A
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Amdt 5A
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 28R, Amdt 5A
San Francisco, CA, San Francisco Intl, RNAV (RNP) Y RWY 28R, Amdt 3A
San Jose, CA, Norman Y Mineta San Jose Intl, ILS OR LOC RWY 12R, Amdt 8A
San Jose, CA, Norman Y Mineta San Jose Intl, ILS OR LOC RWY 30L, ILS RWY 30L (SA CAT I), ILS RWY 30L (SA CAT II), Amdt 25
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) Y RWY 12L, Amdt 3A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) Y RWY 12R, Amdt 3A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) Y RWY 30L, Amdt 3A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (GPS) Y RWY 30R, Amdt 3A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (RNP) Z RWY 12L, Amdt 2A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (RNP) Z RWY 12R, Amdt 3A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (RNP) Z RWY 30L, Amdt 2A
San Jose, CA, Norman Y Mineta San Jose Intl, RNAV (RNP) Z RWY 30R, Amdt 1A
Van Nuys, CA, Van Nuys, ILS Y RWY 16R, Amdt 6
Van Nuys, CA, Van Nuys, ILS Z RWY 16R, Orig
Van Nuys, CA, Van Nuys, VOR–A, Amdt 4B
Van Nuys, CA, Van Nuys, VOR–B, Amdt 3
Miami, FL, Miami Intl, ILS OR LOC RWY 26L, Amdt 16
Miami, FL, Miami Intl, ILS OR LOC RWY 27, Amdt 26
Miami, FL, Miami Intl, RNAV (GPS) RWY 26R, Amdt 3
Miami, FL, Miami Intl, RNAV (GPS) Z RWY 26L, Amdt 2
Miami, FL, Miami Intl, RNAV (GPS) Z RWY 27, Amdt 3
Miami, FL, Miami Intl, RNAV (RNP) Y RWY 26L, Amdt 1
Miami, FL, Miami Intl, RNAV (RNP) Y RWY 27, Amdt 2
Macon, GA, Macon Downtown, LOC RWY 10, Amdt 8
Macon, GA, Macon Downtown, RNAV (GPS) RWY 10, Amdt 2
Macon, GA, Macon Downtown, RNAV (GPS) RWY 28, Amdt 2
Macon, GA, Macon Downtown, Takeoff Minimums and Obstacle DP, Amdt 7
Moultrie, GA, Moultrie Muni, NDB–A, Orig-B
Tifton, GA, Henry Tift Myers, ILS OR LOC RWY 33, Amdt 2
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 15, Orig
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 28, Amdt 1
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 33, Amdt 1
Tifton, GA, Henry Tift Myers, Takeoff Minimums and Obstacle DP, Amdt 6
Tifton, GA, Henry Tift Myers, VOR RWY 28, Amdt 10A, CANCELED
Hailey, ID, Friedman Memorial, RNAV (GPS) W RWY 31, Amdt 2, CANCELED
Hailey, ID, Friedman Memorial, RNAV (GPS) X RWY 31, Orig
Hailey, ID, Friedman Memorial, RNAV (GPS) X RWY 31, Amdt 1, CANCELED
Hailey, ID, Friedman Memorial, RNAV (GPS) Y RWY 31, Orig
Hailey, ID, Friedman Memorial, RNAV (RNP) Y RWY 31, Amdt 1B, CANCELED
Hailey, ID, Friedman Memorial, Takeoff Minimums and Obstacle DP, Amdt 3
Paris, IL, Edgar County, RNAV (GPS) RWY 9, Amdt 1
Paris, IL, Edgar County, RNAV (GPS) RWY 18, Orig
Paris, IL, Edgar County, RNAV (GPS) RWY 27, Amdt 1
Paris, IL, Edgar County, RNAV (GPS) RWY 36, Orig
Paris, IL, Edgar County, Takeoff Minimums and Obstacle DP, Amdt 1
Coldwater, KS, Comanche County, RNAV (GPS) RWY 17, Orig
Coldwater, KS, Comanche County, Takeoff Minimums and Obstacle DP, Orig
Harlan, KY, Tucker-Guthrie Memorial, RNAV (GPS)-A, Orig
Harlan, KY, Tucker-Guthrie Memorial, Takeoff Minimums and Obstacle DP, Orig
Richmond, KY, Central Kentucky Regional, RNAV (GPS) RWY 18, Amdt 1D
Richmond, KY, Central Kentucky Regional, RNAV (GPS) RWY 36, Amdt 2B
Richmond, KY, Central Kentucky Regional, Takeoff Minimums and Obstacle DP, Amdt 1A
Richmond, KY, Central Kentucky Regional, VOR RWY 18, Amdt 7B
Cambridge, MD, Cambridge-Dorchester Rgnl, NDB RWY 34, Amdt 8
Cambridge, MD, Cambridge-Dorchester Rgnl, RNAV (GPS) RWY 34, Orig
Cambridge, MD, Cambridge-Dorchester Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Presque Isle, ME, Northern Maine Rgnl Arpt at Presque IS, RNAV (GPS) RWY 28, Amdt 1A
Holly Springs, MS, Holly Springs-Marshall County, RNAV (GPS) RWY 18, Orig
Holly Springs, MS, Holly Springs-Marshall County, RNAV (GPS) RWY 36, Orig
Holly Springs, MS, Holly Springs-Marshall County, VOR RWY 18, Amdt 7
Beach, ND, Beach, RNAV (GPS) RWY 12, Orig
Beach, ND, Beach, RNAV (GPS) RWY 30, Orig
Beach, ND, Beach, Takeoff Minimums and Obstacle DP, Orig
Hornell, NY, Hornell Muni, RNAV (GPS) RWY 18, Orig-A
Enid, OK, Enid Woodring Rgnl, ILS OR LOC RWY 35, Amdt 6
Ketchum, OK, South Grand Lake Rgnl, Takeoff Minimums and Obstacle DP, Orig
Newport, OR, Newport Muni, ILS OR LOC RWY 16, Amdt 2
Newport, OR, Newport Muni, RNAV (GPS) RWY 16, Amdt 1
Newport, OR, Newport Muni, RNAV (GPS) RWY 34, Amdt 1
Newport, OR, Newport Muni, VOR RWY 16, Amdt 9
Newport, OR, Newport Muni, VOR–A, Amdt 5
Titusville, PA, Titusville, RNAV (GPS) RWY 1, Orig
Titusville, PA, Titusville, RNAV (GPS) RWY 19, Orig
Titusville, PA, Titusville, VOR OR GPS–A, Amdt 5, CANCELED
Martin, SD, Martin Muni, RNAV (GPS) RWY 32, Orig-A
Winner, SD, Winner Rgnl, RNAV (GPS) RWY 31, Amdt 1
Winner, SD, Winner Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Union City, TN, Everett-Stewart Rgnl, ILS OR LOC RWY 1, Amdt 3
Union City, TN, Everett-Stewart Rgnl, RNAV (GPS) RWY 1, Amdt 4
Union City, TN, Everett-Stewart Rgnl, RNAV (GPS) RWY 19, Amdt 2
Union City, TN, Everett-Stewart Rgnl, VOR/DME–A, Amdt 9, CANCELED
Spokane, WA, Felts Field, ILS OR LOC RWY 22R, Amdt 1D
Spokane, WA, Felts Field, VOR RWY 4L, Amdt 6
Sutton, WV, Braxton County, Takeoff Minimums and Obstacle DP, Amdt 1
Big Piney, WY, Miley Memorial Field, Takeoff Minimums and Obstacle DP, Orig-A

[FR Doc. 2016–15990 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31083 Amdt. No. 3702]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 11, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 11, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 17, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *EFFECTIVE UPON PUBLICATION*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
21–Jul–16	ID	Bonners Ferry	Boundary County	6/0359	6/1/16	RNAV (GPS) RWY 2, Orig-D.
21–Jul–16	WA	Ellensburg	Bowers Field	6/0363	6/1/16	RNAV (GPS)-C, Orig-A.
21–Jul–16	OR	Klamath Falls	Klamath Falls	6/0364	6/1/16	ILS OR LOC/DME RWY 32, Amdt 20.
21–Jul–16	OR	Klamath Falls	Klamath Falls	6/0365	6/1/16	RNAV (GPS) RWY 14, Amdt 1.
21–Jul–16	OR	Klamath Falls	Klamath Falls	6/0366	6/1/16	RNAV (GPS) RWY 32, Orig.
21–Jul–16	OR	Klamath Falls	Klamath Falls	6/0367	6/1/16	VOR/DME OR TACAN RWY 14, Amdt 5B.
21–Jul–16	OR	Klamath Falls	Klamath Falls	6/0368	6/1/16	VOR/DME OR TACAN RWY 32, Amdt 5.
21–Jul–16	HI	Kahului	Kahului	6/0372	6/1/16	ILS OR LOC RWY 2, Amdt 24.
21–Jul–16	HI	Kahului	Kahului	6/0373	6/1/16	RNAV (GPS) RWY 23, Amdt 1.
21–Jul–16	HI	Kahului	Kahului	6/0374	6/1/16	NDB RWY 2, Orig-A.
21–Jul–16	HI	Kahului	Kahului	6/0375	6/1/16	RNAV (GPS) Y RWY 2, Amdt 1A.
21–Jul–16	HI	Kahului	Kahului	6/0376	6/1/16	VOR RWY 20, Orig-B.
21–Jul–16	HI	Kahului	Kahului	6/0377	6/1/16	VOR/DME OR TACAN RWY 20, Orig-A.
21–Jul–16	OK	Norman	University of Oklahoma Westheimer.	6/0597	6/1/16	ILS OR LOC RWY 18, Amdt 2.
21–Jul–16	GA	Macon	Middle Georgia Rgnl	6/0626	6/1/16	VOR RWY 23, Amdt 4B.
21–Jul–16	IA	Iowa City	Iowa City Muni	6/0873	6/1/16	RNAV (GPS) RWY 25, Orig-A.
21–Jul–16	IA	Iowa City	Iowa City Muni	6/0875	6/1/16	RNAV (GPS) RWY 30, Orig.
21–Jul–16	IA	Iowa City	Iowa City Muni	6/0877	6/1/16	VOR–A, Orig.
21–Jul–16	NY	New York	John F Kennedy Intl	6/1525	6/8/16	VOR OR GPS RWY 13 L/R, Amdt 18C.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/1930	6/6/16	RNAV (GPS) RWY 35, Orig-A.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/1931	6/6/16	RNAV (GPS) RWY 28, Amdt 1A.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/1932	6/6/16	RNAV (GPS) RWY 22, Amdt 1A.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/1933	6/6/16	RNAV (GPS) RWY 17, Amdt 1A.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/1934	6/6/16	RNAV (GPS) RWY 4, Amdt 1A.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/1935	6/6/16	VOR/DME OR TACAN RWY 10, Amdt 6A.
21–Jul–16	MN	Worthington	Worthington Muni	6/2157	6/1/16	RNAV (GPS) RWY 36, Orig.
21–Jul–16	MN	Worthington	Worthington Muni	6/2161	6/1/16	RNAV (GPS) RWY 18, Orig-A.
21–Jul–16	GA	Nahunta	Brantley County	6/2946	6/2/16	RNAV (GPS) Z RWY 19, Orig-A.
21–Jul–16	NJ	Woodbine	Woodbine Muni	6/3045	6/6/16	VOR–A, Amdt 1.
21–Jul–16	NJ	Woodbine	Woodbine Muni	6/3049	6/6/16	RNAV (GPS) RWY 1, Orig-A.
21–Jul–16	OH	Findlay	Findlay	6/3263	6/2/16	RNAV (GPS) RWY 7, Orig.
21–Jul–16	SD	Pierre	Pierre Rgnl	6/3272	6/2/16	ILS OR LOC RWY 31, Amdt 12B.
21–Jul–16	TX	Fort Stockton	Fort Stockton-Pecos County	6/4698	6/2/16	VOR RWY 12, Amdt 8.
21–Jul–16	TX	Fort Stockton	Fort Stockton-Pecos County	6/4700	6/2/16	VOR/DME RWY 30, Orig.
21–Jul–16	WI	New Richmond	New Richmond Rgnl	6/4895	6/2/16	RNAV (GPS) RWY 14, Amdt 2B.
21–Jul–16	AK	Hooper Bay	Hooper Bay	6/5332	6/8/16	VOR/DME RWY 31, ORIG–B.
21–Jul–16	AK	Hooper Bay	Hooper Bay	6/5333	6/8/16	RNAV (GPS) RWY 31, Amdt 1A.
21–Jul–16	AK	Hooper Bay	Hooper Bay	6/5334	6/8/16	RNAV (GPS) RWY 13, Amdt 1A.
21–Jul–16	FL	Apalachicola	Apalachicola Rgnl-Cleve Randolph Field.	6/5410	6/1/16	RNAV (GPS) RWY 32, Amdt 2B.
21–Jul–16	FL	Apalachicola	Apalachicola Rgnl-Cleve Randolph Field.	6/5411	6/1/16	RNAV (GPS) RWY 24, Amdt 1B.
21–Jul–16	RI	Newport	Newport State	6/5415	6/6/16	LOC RWY 22, Amdt 7C.
21–Jul–16	RI	Newport	Newport State	6/5416	6/6/16	RNAV (GPS) RWY 16, Orig-A.
21–Jul–16	RI	Newport	Newport State	6/5417	6/6/16	VOR/DME RWY 16, Amdt 1A.
21–Jul–16	RI	Pawtucket	North Central State	6/5419	6/6/16	VOR–A, Amdt 7A.
21–Jul–16	RI	Pawtucket	North Central State	6/5420	6/6/16	VOR–B, Amdt 7A.
21–Jul–16	MA	Plymouth	Plymouth Muni	6/5422	6/6/16	ILS OR LOC/DME RWY 6, Amdt 1D.
21–Jul–16	MA	Plymouth	Plymouth Muni	6/5423	6/6/16	RNAV (GPS) RWY 6, Amdt 1B.
21–Jul–16	RI	Providence	Theodore Francis Green State	6/5424	6/6/16	ILS OR LOC RWY 34, Amdt 12.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
21–Jul–16	RI	Providence	Theodore Francis Green State	6/5429	6/6/16	RNAV (GPS) RWY 5, Orig-A.
21–Jul–16	RI	Providence	Theodore Francis Green State	6/5430	6/6/16	VOR/DME RWY 23, Amdt 6F.
21–Jul–16	RI	Providence	Theodore Francis Green State	6/5431	6/6/16	VOR RWY 5, Amdt 14A.
21–Jul–16	RI	Providence	Theodore Francis Green State	6/5432	6/6/16	ILS OR LOC RWY 23, ILS RWY 23 (SA CAT I), ILS RWY 23 (SA CAT II), Amdt 7.
21–Jul–16	RI	Providence	Theodore Francis Green State	6/5436	6/6/16	ILS OR LOC RWY 5, ILS RWY 5 (CAT II), ILS RWY 5 (CAT III), Amdt 19.
21–Jul–16	MA	Norwood	Norwood Memorial	6/5442	6/6/16	LOC RWY 35, Amdt 10D.
21–Jul–16	RI	North Kingstown	Quonset State	6/5443	6/6/16	VOR RWY 34, Amdt 2B.
21–Jul–16	RI	North Kingstown	Quonset State	6/5444	6/6/16	VOR–A, Amdt 5C.
21–Jul–16	CT	Groton (New London).	Groton-New London	6/5454	6/6/16	RNAV (GPS) RWY 23, Orig-C.
21–Jul–16	CT	Groton (New London).	Groton-New London	6/5455	6/6/16	VOR RWY 23, Amdt 10B.
21–Jul–16	MA	Falmouth	Cape Cod Coast Guard Air Station	6/5460	6/6/16	ILS OR LOC RWY 32, Amdt 1A.
21–Jul–16	MA	New Bedford	New Bedford Rgnl	6/5461	6/6/16	ILS OR LOC RWY 5, Amdt 26.
21–Jul–16	MA	New Bedford	New Bedford Rgnl	6/5462	6/6/16	RNAV (GPS) RWY 5, Amdt 1.
21–Jul–16	MA	Southbridge	Southbridge Muni	6/5466	6/6/16	RNAV (GPS) RWY 2, Orig-A.
21–Jul–16	MA	Taunton	Taunton Muni—King Field	6/5488	6/6/16	NDB RWY 30, Amdt 5B.
21–Jul–16	LA	Houma	Houma-Terrebonne	6/5896	6/6/16	COPTER VOR/DME RWY 12, Amdt 4.
21–Jul–16	LA	Houma	Houma-Terrebonne	6/5898	6/6/16	RNAV (GPS) RWY 18, Orig.
21–Jul–16	LA	Houma	Houma-Terrebonne	6/5899	6/6/16	RNAV (GPS) RWY 36, Orig.
21–Jul–16	LA	Houma	Houma-Terrebonne	6/5900	6/6/16	VOR/DME RWY 30, Amdt 12.
21–Jul–16	LA	Thibodaux	Thibodaux Muni	6/5903	6/6/16	VOR OR GPS–A, Amdt 1A.
21–Jul–16	LA	New Orleans	Louis Armstrong New Orleans Intl	6/5915	6/7/16	RNAV (GPS) Y RWY 11, Amdt 2.
21–Jul–16	LA	New Orleans	Louis Armstrong New Orleans Intl	6/5916	6/7/16	RNAV (RNP) Z RWY 11, Amdt 1.
21–Jul–16	LA	New Orleans	Louis Armstrong New Orleans Intl	6/5917	6/7/16	VOR/DME RWY 11, Amdt 1.
21–Jul–16	LA	New Orleans	Louis Armstrong New Orleans Intl	6/5918	6/7/16	ILS OR LOC RWY 11, ILS RWY 11 (SA CAT I), ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Amdt 3.
21–Jul–16	AZ	Kingman	Kingman	6/5919	6/8/16	VOR/DME RWY 21, AMDT 7B.
21–Jul–16	LA	Patterson	Harry P Williams Memorial	6/5938	6/15/16	RNAV (GPS) RWY 6, Orig-A.
21–Jul–16	LA	Patterson	Harry P Williams Memorial	6/5940	6/15/16	RNAV (GPS) RWY 24, Amdt 1B.
21–Jul–16	CA	Paso Robles	Paso Robles Muni	6/5958	6/8/16	RNAV (GPS) RWY 31, Orig.
21–Jul–16	LA	Patterson	Harry P Williams Memorial	6/5959	6/15/16	ILS OR LOC/DME RWY 24, Amdt 2D.
21–Jul–16	IA	Oelwein	Oelwein Muni	6/5960	6/7/16	VOR OR GPS–A, Amdt 3A.
21–Jul–16	IA	Waverly	Waverly Muni	6/5962	6/7/16	VOR–A, Amdt 3A.
21–Jul–16	IA	Waterloo	Waterloo Rgnl	6/5963	6/7/16	ILS OR LOC RWY 12, Amdt 9.
21–Jul–16	IA	Waterloo	Waterloo Rgnl	6/5964	6/7/16	LOC BC RWY 30, Amdt 11A.
21–Jul–16	IA	Waterloo	Waterloo Rgnl	6/5965	6/7/16	VOR RWY 6, Amdt 3.
21–Jul–16	IA	Waterloo	Waterloo Rgnl	6/5966	6/7/16	VOR RWY 12, Amdt 10.
21–Jul–16	IA	Waterloo	Waterloo Rgnl	6/5967	6/7/16	VOR RWY 18, Amdt 8A.
21–Jul–16	IA	Waterloo	Waterloo Rgnl	6/5968	6/7/16	VOR RWY 24, Amdt 16A.
21–Jul–16	LA	Galliano	South Lafourche Leonard Miller Jr	6/5972	6/6/16	ILS OR LOC/DME RWY 36, Amdt 1.
21–Jul–16	LA	Galliano	South Lafourche Leonard Miller Jr	6/5973	6/6/16	RNAV (GPS) RWY 18, Amdt 2.
21–Jul–16	LA	Galliano	South Lafourche Leonard Miller Jr	6/5974	6/6/16	RNAV (GPS) RWY 36, Amdt 1.
21–Jul–16	VA	Wallops Island	Wallops Flight Facility	6/6317	6/6/16	VOR OR TACAN RWY 17, Amdt 7A.
21–Jul–16	KS	Smith Center	Smith Center Muni	6/6870	6/2/16	RNAV (GPS) RWY 32, Orig.
21–Jul–16	KS	Smith Center	Smith Center Muni	6/6880	6/2/16	RNAV (GPS) RWY 14, Orig.
21–Jul–16	FL	Tallahassee	Tallahassee Intl	6/6953	6/8/16	RNAV (GPS) RWY 27, Amdt 2.
21–Jul–16	WV	Beckley	Raleigh County Memorial	6/7099	6/1/16	ILS OR LOC RWY 19, Amdt 6A.
21–Jul–16	WV	Beckley	Raleigh County Memorial	6/7100	6/1/16	RNAV (GPS) RWY 19, Amdt 1A.
21–Jul–16	WV	Beckley	Raleigh County Memorial	6/7101	6/1/16	RNAV (GPS) RWY 10, Amdt 1A.
21–Jul–16	WV	Beckley	Raleigh County Memorial	6/7102	6/1/16	RNAV (GPS) RWY 1, Amdt 1A.
21–Jul–16	WV	Beckley	Raleigh County Memorial	6/7104	6/1/16	RNAV (GPS) RWY 28, Amdt 1A.
21–Jul–16	MI	Lambertville	Toledo Suburban	6/7937	6/1/16	VOR OR GPS–A, Amdt 7.
21–Jul–16	TX	Terrell	Terrell Muni	6/7945	6/6/16	RNAV (GPS) RWY 17, Orig.
21–Jul–16	NJ	Newark	Newark Liberty Intl	6/8187	6/8/16	RNAV (GPS) RWY 11, Orig-D.
21–Jul–16	NJ	Newark	Newark Liberty Intl	6/8188	6/8/16	RNAV (GPS) RWY 22R, Amdt 1C.
21–Jul–16	NJ	Newark	Newark Liberty Intl	6/8189	6/8/16	COPTER ILS/DME RWY 22L, Orig-C.
21–Jul–16	VT	Burlington	Burlington Intl	6/8795	6/8/16	ILS OR LOC/DME RWY 15, Amdt 24.
21–Jul–16	MA	Beverly	Beverly Muni	6/8823	6/8/16	VOR RWY 16, Amdt 5B.
21–Jul–16	MA	Beverly	Beverly Muni	6/8843	6/8/16	RNAV (GPS) RWY 27, Orig-C.
21–Jul–16	MA	Beverly	Beverly Muni	6/8850	6/8/16	LOC RWY 16, Amdt 7B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
21–Jul–16	MA	Beverly	Beverly Muni	6/8851	6/8/16	RNAV (GPS) RWY 16, Amdt 1C.
21–Jul–16	MA	Beverly	Beverly Muni	6/8853	6/8/16	RNAV (GPS) RWY 34, Orig-B.
21–Jul–16	SC	Mount Pleasant	Mt Pleasant Rgnl-Faison Field	6/9457	6/8/16	RNAV (GPS) RWY 35, Orig-B.
21–Jul–16	SC	Mount Pleasant	Mt Pleasant Rgnl-Faison Field	6/9459	6/8/16	VOR/DME–A, Amdt 1A.
21–Jul–16	SC	Mount Pleasant	Mt Pleasant Rgnl-Faison Field	6/9460	6/8/16	RNAV (GPS) RWY 17, Orig-B.

[FR Doc. 2016–15989 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 736, 738 and 746

[Docket No. 160622547–6547–01]

RIN 0694–AG99

Updated Statements of Legal Authority for the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule updates the Code of Federal Regulations (CFR) legal authority paragraphs in the Export Administration Regulations (EAR) to cite a Presidential notice extending an emergency declared pursuant to the International Emergency Economic Powers Act and also to remove one obsolete citation. This is a procedural rule that only updates authority paragraphs of the EAR to make them current and to avoid confusion. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

DATES: The rule is effective July 11, 2016.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Email *william.arvin@bis.doc.gov,* Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The authority for parts 730, 736 and 746 of the EAR (15 CFR parts 730, 736 and 744) rests, in part, on Executive Order 13338 of May 11, 2004—Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria (69 FR 26751, 3 CFR, 2004 Comp., p. 168) and on annual notices by the President continuing that emergency. This rule updates the authority paragraphs in 15 CFR parts 730, 736 and 746 to cite the Notice of May 3, 2016, 81 FR 27293 (May 5, 2016), which continues that emergency.

This rule also removes the citation to 30 U.S.C. 185(s), 185(u), which imposed certain restrictions on exports of crude oil, from the authority paragraph of 15 CFR part 738 because, as a result of Division O, Title 1, Section 101, subsection (b) of Public Law 114–113, the EAR no longer imposes a license requirement on exports of crude oil.

This rule is purely procedural and makes no changes other than to revise CFR authority citations to make them current. It does not change the text of any section of the EAR, nor does it alter any right, obligation or prohibition that applies to any person under the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223 and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Assistant Secretary for Export Administration finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. It clarifies information and is non-discretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 736 and 738

Exports.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 730, 736, 738 and 746 of the EAR (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of May 3, 2016, 81 FR 27293 (May 5, 2016).

PART 736—[AMENDED]

■ 2. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of May 3, 2016, 81 FR 27293 (May 5, 2016).

PART 738—[AMENDED]

■ 3. The authority citation for part 738 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

PART 746—[AMENDED]

■ 4. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of May 3, 2016, 81 FR 27293 (May 5, 2016).

Dated: July 6, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–16365 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2016–N–1653]

Medical Devices; Neurological Devices; Classification of the Thermal System for Insomnia

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the thermal system for insomnia into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the thermal system for insomnia's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective July 11, 2016. The classification was applicable on May 13, 2016.

FOR FURTHER INFORMATION CONTACT: Leigh Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2656, Silver Spring, MD 20993–0002, 301–796–5613, *leigh.anderson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of "low-moderate risk" or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA shall classify the device by written order within 120 days. This classification will be the initial classification of the device.

On October 17, 2014, Cerêve Inc. submitted a request for classification of the Cerêve Sleep System under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on May 13, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 882.5700.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a thermal system for insomnia will need to comply with the special controls named in this final order.

The device is assigned the generic name thermal system for insomnia, and it is identified as a prescription device for use in patients with insomnia that is used to apply a specified temperature to the skin surface.

FDA has identified the following risks to health associated specifically with this type of device, as well as the mitigation measures required to mitigate these risks in table 1:

TABLE 1—THERMAL SYSTEM FOR INSOMNIA RISKS AND MITIGATION MEASURES

Identified risk	Mitigation method
Adverse skin reaction	Biocompatibility Assessment. Labeling.
Electromagnetic Interference with Other Devices	Electromagnetic Compatibility Testing. Labeling.
Electrical Safety (e.g., shock)	Electrical Safety Testing. Labeling.
Thermal Injury	Non-clinical Performance Testing. Software Verification, Validation, and Hazard Analysis. Labeling.

FDA believes that the special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

Thermal systems for insomnia devices are not safe to use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109 *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the thermal system for insomnia they intend to market.

II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

IV. Reference

The following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.*

1. DEN140032 De novo Request per 513(f)(2) from Cerêve, Inc., dated October 17, 2014.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 882.5700 to subpart F to read as follows:

§ 882.5700 Thermal system for insomnia.

(a) *Identification.* A thermal system for insomnia is a prescription device for use in patients with insomnia that is used to apply a specified temperature to the skin surface.

(b) *Classification*. Class II (special controls). The special controls for this device are:

(1) The patient-contacting components of the device must be demonstrated to be biocompatible.

(2) Performance testing must demonstrate electromagnetic compatibility and electrical safety.

(3) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be evaluated:

(i) Thermal performance of the device, including maintenance of the target temperature, must be evaluated under simulated use conditions.

(ii) Mechanical testing to demonstrate the device can withstand forces under anticipated use conditions.

(iii) Mechanical testing to demonstrate the device is resistant to leakage under anticipated use conditions.

(4) Software verification, validation, and hazard analysis must be performed.

(5) Patient labeling must be provided to convey information regarding safe use of the device, including instructions for assembly.

Dated: July 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16351 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–11712; Prohibited Transaction Exemption 2016–01]

[ZRIN 1210–ZA25]

Best Interest Contract Exemption; Correction

AGENCY: Employee Benefits Security Administration (EBSA), U.S. Department of Labor.

ACTION: Technical corrections.

SUMMARY: This document makes technical corrections to the Department of Labor's Best Interest Contract Exemption, which was published in the **Federal Register** on April 8, 2016. The Best Interest Contract Exemption allows certain persons that are fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA) or the Internal Revenue Code (the Code), or both, by reason of providing investment advice, to receive compensation that may otherwise be prohibited. The corrections in this document fix typographical errors, make minor clarifications to provisions that might otherwise be confusing, and confirm insurers' broad eligibility to rely on the exemption, consistent with the exemption's clearly intended scope and the analysis and data relied upon in the Department's final regulatory impact analysis (RIA).

DATES: *Issuance date:* These technical corrections are issued July 11, 2016, without further action or notice.

Applicability date: The Best Interest Contract Exemption, as corrected herein, is applicable to transactions occurring on or after April 10, 2017.

FOR FURTHER INFORMATION CONTACT: Brian Shiker or Susan Wilker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8824 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Best Interest Contract Exemption was granted pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637 (October 27, 2011)). It was adopted by the Department in connection with the publication of a final regulation defining who is a fiduciary of an employee benefit plan under ERISA as a result of giving investment advice to a plan or its participants or beneficiaries (Regulation).[1] The Regulation also applies to the definition of a "fiduciary" of a plan (including an IRA) under the Code.

The exemption provides relief from provisions of ERISA and the Code that generally prohibit fiduciaries with respect to employee benefit plans and individual retirement accounts (IRAs) from engaging in self-dealing and receiving compensation from third parties in connection with transactions involving the plans and IRAs. The exemption allows entities such as registered investment advisers, broker-dealers, banks and insurance companies (referred to in the exemption as Financial Institutions), and their employees, agents and representatives (referred to as Advisers), that are ERISA or Code fiduciaries by reason of the provision of investment advice, to receive compensation that may otherwise give rise to prohibited transactions as a result of their advice to plan participants and beneficiaries, IRA owners and certain plan fiduciaries (including small plan sponsors). The exemption is subject to protective conditions to safeguard the interests of the plans, participants and beneficiaries and IRA owners.

The Best Interest Contract Exemption is broadly available for Advisers and Financial Institutions that make investment recommendations to retail "Retirement Investors," including plan participants and beneficiaries, IRA owners, and non-institutional fiduciaries (referred to in the exemption as "Retail Fiduciaries"). As a condition of receiving compensation that would otherwise be prohibited under ERISA and the Code, the exemption requires Financial Institutions to acknowledge their fiduciary status and the fiduciary status of their Advisers in writing. The Financial Institution and Advisers must adhere to enforceable standards of fiduciary conduct and fair dealing with respect to their advice. In the case of IRAs and non-ERISA plans, the exemption requires that the standards be set forth in an enforceable contract with the Retirement Investor; the exemption permits reliance on a negative consent process for existing contract holders. Under the exemption's terms, Financial Institutions are not required to enter into a contract with ERISA plan investors, but they must adhere to these same standards of fiduciary conduct, which the investors can effectively enforce pursuant to ERISA sections 502(a)(2) and (3). Likewise, "Level Fee" Fiduciaries that, with their Affiliates, receive only a Level Fee in connection with advisory or investment management services, do not have to enter into a contract with Retirement Investors, but they must provide a written statement of fiduciary status, adhere to standards of fiduciary conduct, and prepare a written documentation of the reasons for the recommendation.

Explanation of Corrections

This document makes technical corrections to the Best Interest Contract Exemption as described below. In addition, the document adds an identifier, Prohibited Transaction Exemption 2016–01, to the heading of the Best Interest Contract Exemption. For convenience, the text of the corrected exemption is reprinted in its entirety at the conclusion of this document. The preamble to the originally granted exemption provides a general overview of the exemption, at 81 FR 21002.

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[1] 81 FR 20945 (April 8, 2016).

1. In the preamble discussion of the negative consent procedure for entering into the contract with existing contract holders, page 21023, the Best Interest Contract Exemption stated that "If the Retirement Investor does terminate the contract within that 30-day period, this exemption will provide relief for 14 days after the date on which the termination is received by the Financial Institution." However, Section II(a)(1)(ii) of the exemption text regarding the negative consent procedure, page 21077, inadvertently failed to include that sentence. Section II(a)(1)(ii) is corrected to insert that sentence as the second sentence of the section. This correction will provide certainty to parties relying on the exemption as to the period of relief following termination of the contract by any Retirement Investor.

2. Section II(a)(1)(ii) of the exemption defines an existing contract as "an investment advisory agreement, investment program agreement, account opening agreement, insurance contract, annuity contract, or similar agreement or contract that was executed before January 1, 2018, and remains in effect." There is an error in the quotation of that language on page 21023 of the preamble, which, rather than using the date "January 1, 2018," referred to the "Applicability Date." For avoidance of doubt, the Department confirms that January 1, 2018, is the correct date of reference for existing contracts.

3. Section II(h) of the exemption, page 21079, lacked a comma between "(g)" and "III." The first sentence of Section II(h) is corrected to read "Sections II(a), (d), (e), (f), (g), III and V do not apply to recommendations by Financial Institutions and Advisers that are Level Fee Fiduciaries."

4. Section VI of the exemption, page 21082, is entitled "Exemption for Purchases and Sales, Including Insurance and Annuity Contracts." However, the text of Section VI(b) referred only to a "purchase" and inadvertently omitted reference to a "sale." Section VI(b) is corrected to insert "or sale" immediately following "purchase," and, on line 9 to replace "from" with "with," to conform to the section heading and accurately describe the transactions covered by the exemption.

5. Section VII(b)(3), page 20182, included an unmatched close parenthesis. Section VII(b)(3) is corrected to delete ")" after the word "contract."

6. The definition of "Adviser" in Section VIII(a) of the exemption provided, in relevant part, that an Adviser "means an individual who: (1) Is a fiduciary of the Plan or IRA *solely* by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction (emphasis added)." In contrast, Section I(c)(4) of the exemption provided an exclusion for an Adviser that "has or exercises any discretionary authority or discretionary control with respect to the recommended transaction." Section I(c)(4) reflects the Department's intent that the exemption not apply if the Adviser has or exercises discretion regarding the recommended transaction. The Department did not intend to prevent Advisers from using the exemption if they have discretionary authority over other assets of the Plan or IRA that are not subject to the investment advice or if they previously had, or subsequently gain, discretionary authority over assets of the Plan or IRA. To avoid any doubt as to the availability of the exemption under these circumstances, Section VIII(a)(1) is corrected to delete the word "solely."

7. Under Section VIII(e)(3)(iii), insurance companies relying on the exemption must be "domiciled in a state whose law requires that actuarial review of reserves be conducted annually by an Independent firm of actuaries and reported to the appropriate regulatory authority." This condition inadvertently limited the availability of the exemption with respect to insurance companies because, while state laws generally require annual actuarial reviews of insurance company reserves to be conducted by a qualified actuary appointed by the board of directors, they do not generally require that such reviews be performed by an "Independent firm of actuaries." *See* National Association of Insurance Commissioners (NAIC) Actuarial Opinion and Memorandum Model Regulation, April 2010.[2] As evidenced by the Department's Regulatory Impact Analysis (RIA), the Department clearly intended to make the exemption broadly available to insurance companies. To ensure that the exemption is available to insurance companies as the Department clearly intended in its original rulemaking, Section VIII(e)(3)(iii) is corrected to delete the phrase "by an Independent firm of actuaries."

8. Section VIII(j) of the exemption defines the term "Plan" to mean "any employee benefit plan described in section 3(3) of the Act and any plan described in section 4975(e)(1)(A) of the Code." The word "Act" refers to the Employee Retirement Income Security Act of 1974, which is defined in the exemption as "ERISA." To avoid uncertainty as to the meaning of the word "Act," Section VIII(j) is corrected to replace the words "the Act" with the word "ERISA."

Based on the limited, corrective purpose of these changes, the Department finds for good cause that notice and public comment procedure is unnecessary. All of the corrections either fix typographical errors; clarify provisions that might otherwise be confusing; or bring the text of the exemption into agreement with the common understanding during the rulemaking of the exemption's application to insurance companies, as well as with the Department's clear intent, as expressed in the preamble and RIA analyses for the final rule and exemptions. The corrections set forth in this document will not alter the analysis and data contained in the RIA applicable to the rulemaking, including the assessment of its costs and benefits.

Executive Order 12866

Under Executive Order 12866, "significant" regulatory actions are subject to the requirements of the Executive Order and review by the OMB. Section 3(f) of Executive Order 12866, defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant" regulatory actions); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Principally due to correction no. 7, described above, and in light of the significance of the original rulemaking, this action is being treated as "significant" within the meaning of

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[2] *Available at http://www.naic.org/store/free/MDL-822.pdf.* Section VIII(e)(3)(iii) was in the proposed exemption (80 FR 21960, 21988 (April 20, 2015)) and was based on several prior individual exemptions issued by the Department related to reinsurance by captive insurance companies (*see e.g.*, PTE 2000–48, 65 FR 60452 (Oct. 11, 2000), PTE 2013–06, 78 FR 19323 (March 29, 2013), and PTE 2015–10, 80 FR 44765 (July 27, 2015)).

Section 3(f)(1) of the Executive Order. The analysis and data contained in the final RIA applicable to the rulemaking, including the assessment of its costs and benefits, will now more appropriately represent the rule as amended by this action and as originally intended. As a result, these corrections were submitted to the Office of Management and the Budget (OMB) for review.

As noted above, the technical corrections to the Best Interest Contact Exemption published in the **Federal Register** on April 8, 2016 (81 FR 21002) fix typographical errors, make minor clarifications to provisions that might otherwise be confusing, and confirm insurers' broad eligibility to rely on the exemption, consistent with the exemption's clearly intended scope and the analysis and data relied upon in the Department's final regulatory impact analysis (RIA). Thus, for purpose of compliance with Executive Order 12866, with respect to these corrections, the Department directs the attention of interested parties to the Department's complete RIA, which was published on the Department's Web site at the same time that the final rule and exemptions were published in the **Federal Register**, and which is available at *https://www.dol.gov/ebsa/pdf/conflict-of-interest-ria.pdf.*

Paperwork Reduction Act Statement

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) in minimized, collection instructions are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

As discussed above, the Department is issuing technical corrections to its final Best Interest Contract Exemption, which was published in the **Federal Register** on April 8, 2016 (81 FR 21002). All of the corrections either correct typographical errors, clarify provisions that might otherwise be confusing, or bring the text of the exemption into agreement with the Department's intent, as expressed in the PRA analyses for the final rule and exemptions. The collections of information for the final exemption were approved under OMB control number 1210–0156, which is currently scheduled to expire on June 30, 2019.

In FR Doc. 2016–07925, appearing on page 21002 in the **Federal Register** of Friday, April 8, 2016, the following corrections are made. On pages 21075 through 21085, the Best Interest Contract Exemption is corrected to read as follows:

Exemption

Section I—Best Interest Contract Exemption

(a) *In general.* ERISA and the Internal Revenue Code prohibit fiduciary advisers to employee benefit plans (Plans) and individual retirement plans (IRAs) from receiving compensation that varies based on their investment advice. Similarly, fiduciary advisers are prohibited from receiving compensation from third parties in connection with their advice. This exemption permits certain persons who provide investment advice to Retirement Investors, and associated Financial Institutions, Affiliates and other Related Entities, to receive such otherwise prohibited compensation as described below.

(b) *Covered transactions.* This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation as a result of their provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) to a Retirement Investor.

As defined in Section VIII(o) of the exemption, a Retirement Investor is: (1) A participant or beneficiary of a Plan with authority to direct the investment of assets in his or her Plan account or to take a distribution; (2) the beneficial owner of an IRA acting on behalf of the IRA; or (3) a Retail Fiduciary with respect to a Plan or IRA.

As detailed below, Financial Institutions and Advisers seeking to rely on the exemption must adhere to Impartial Conduct Standards in rendering advice regarding retirement investments. In addition, Financial Institutions must adopt policies and procedures designed to ensure that their individual Advisers adhere to the Impartial Conduct Standards; disclose important information relating to fees, compensation, and Material Conflicts of Interest; and retain records demonstrating compliance with the exemption. Level Fee Fiduciaries that will receive only a Level Fee in connection with advisory or investment management services must comply with more streamlined conditions designed to target the conflicts of interest associated with such services. The exemption provides relief from the restrictions of ERISA section 406(a)(1)(D) and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(D), (E) and (F). The Adviser and Financial Institution must comply with the applicable conditions of Sections II–V to rely on this exemption. This document also contains separate exemptions in Section VI (Exemption for Purchases and Sales, including Insurance and Annuity Contracts) and Section VII (Exemption for Pre-Existing Transactions).

(c) *Exclusions.* This exemption does not apply if:

(1) The Plan is covered by Title I of ERISA, and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser or Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an affiliate thereof, that was selected to provide advice to the Plan by a fiduciary who is not Independent;

(2) The compensation is received as a result of a Principal Transaction;

(3) The compensation is received as a result of investment advice to a Retirement Investor generated solely by an interactive Web site in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the Web site without any personal interaction or advice from an individual Adviser (*i.e.*, "robo-advice") unless the robo-advice provider is a Level Fee Fiduciary that complies with the conditions applicable to Level Fee Fiduciaries; or

(4) The Adviser has or exercises any discretionary authority or discretionary control with respect to the recommended transaction.

Section II—Contract, Impartial Conduct, and Other Requirements

The conditions set forth in this section include certain Impartial Conduct Standards, such as a Best Interest Standard, that Advisers and Financial Institutions must satisfy to rely on the exemption. In addition, Section II(d) and (e) requires Financial Institutions to adopt anti-conflict policies and procedures that are reasonably designed to ensure that Advisers adhere to the Impartial Conduct Standards, and requires disclosure of important information about the Financial Institutions' services, applicable fees and compensation. With respect to IRAs and other Plans not covered by Title I of ERISA, the Financial Institutions must agree that they and their Advisers will adhere to the exemption's standards in a written contract that is enforceable by the Retirement Investors. To minimize compliance burdens, the exemption provides that the contract terms may be incorporated into account opening documents and similar commonly-used agreements with new customers, permits reliance on a negative consent process with respect to existing contract holders, and provides a method of meeting the exemption requirement in the event that the Retirement Investor does not open an account with the Adviser but nevertheless acts on the advice through other channels. Advisers and Financial Institutions need not execute the contract before they make a recommendation to the Retirement Investor. However, the contract must cover any advice given prior to the contract date in order for the exemption to apply to such advice. There is no contract requirement for recommendations to Retirement Investors about investments in Plans covered by Title I of ERISA, but the Impartial Conduct Standards and other requirements of Section II(b)–(e), including a written acknowledgment of fiduciary status, must be satisfied in order for relief to be available under the exemption, as set forth in Section II(g). Section II(h) provides conditions for recommendations by Level Fee Fiduciaries, which, with their Affiliates, will receive only a Level Fee in connection with advisory or investment management services with respect to the Plan or IRA assets. Section II(i) provides conditions for referral fees received by banks and bank employees pursuant to Bank Networking Arrangements. Section II imposes the following conditions on Financial Institutions and Advisers:

(a) *Contracts With Respect to Investments in IRAs and Other Plans Not Covered by Title I of ERISA.* If the investment advice concerns an IRA or a Plan that is not covered by Title I of ERISA, the advice is subject to an enforceable written contract on the part of the Financial Institution, which may be a master contract covering multiple recommendations, that is entered into in accordance with this Section II(a) and incorporates the terms set forth in Section II(b)–(d). The Financial Institution additionally must provide the disclosures required by Section II(e). The contract must cover advice rendered prior to the execution of the contract in order for the exemption to apply to such advice and related compensation.

(1) *Contract Execution and Assent*—(i) *New Contracts.* Prior to or at the same time as the execution of the recommended transaction, the Financial Institution enters into a written contract with the Retirement Investor acting on behalf of the Plan, participant or beneficiary account, or IRA, incorporating the terms required by Section II(b)–(d). The terms of the contract may appear in a standalone document or they may be incorporated into an investment advisory agreement, investment program agreement, account opening agreement, insurance or annuity contract or application, or similar document, or amendment thereto. The contract must be enforceable against the Financial Institution. The Retirement Investor's assent to the contract may be evidenced by handwritten or electronic signatures.

(ii) *Amendment of Existing Contracts by Negative Consent.* As an alternative to executing a contract in the manner set forth in the preceding paragraph, the Financial Institution may amend Existing Contracts to include the terms required in Section II(b)–(d) by delivering the proposed amendment and the disclosure required by Section II(e) to the Retirement Investor prior to January 1, 2018, and considering the failure to terminate the amended contract within 30 days as assent. If the Retirement Investor does terminate the contract within that 30-day period, this exemption will provide relief for 14 days after the date on which the termination is received by the Financial Institution. An Existing Contract is an investment advisory agreement, investment program agreement, account opening agreement, insurance contract, annuity contract, or similar agreement or contract that was executed before January 1, 2018, and remains in effect. If the Financial Institution elects to use the negative consent procedure, it may deliver the proposed amendment by mail or electronically, but it may not impose any new contractual obligations, restrictions, or liabilities on the Retirement Investor by negative consent.

(iii) *Failure To Enter Into Contract.* Notwithstanding a Financial Institution's failure to enter into a contract as required by subsection (i) above with a Retirement Investor who does not have an Existing Contract, this exemption will apply to the receipt of compensation by the Financial Institution, or any Adviser, Affiliate or Related Entity thereof, as a result of the Adviser's or Financial Institution's investment advice to such Retirement Investor regarding an IRA or non-ERISA Plan, provided:

(A) The Adviser making the recommendation does not receive compensation, directly or indirectly, that is reasonably attributable to the Retirement Investor's purchase, holding, exchange or sale of the investment;

(B) The Financial Institution's policies and procedures prohibit the Financial Institution and its Affiliates and Related Entities from providing compensation to their Advisers in lieu of compensation described in subsection (iii)(A), including, but not limited to bonuses or prizes or other incentives, and the Financial Institution reasonably monitors such policies and procedures;

(C) The Adviser and Financial Institution comply with the Impartial Conduct Standards set forth in Section II(c), the policies and procedures requirements of Section II(d) (except for the requirement of a warranty with respect to those policies and procedures), the web disclosure requirements of Section III(b) and, as applicable, the conditions of Sections IV(b)(3)–(6) (Conditions for Advisers and Financial Institution that restrict recommendations, in whole or part, to Proprietary Products or to investments that generate Third Party Payments) with respect to the recommendation; and

(D) The Financial Institution's failure to enter into the contract is not part of an effort, attempt, agreement, arrangement or understanding by the Adviser or the Financial Institution designed to avoid compliance with the exemption or enforcement of its conditions, including the contractual conditions set forth in subsections (i) and (ii).

(2) *Notice.* The Financial Institution maintains an electronic copy of the Retirement Investor's contract on its Web site that is accessible by the Retirement Investor.

(b) *Fiduciary.* The Financial Institution affirmatively states in writing that it and the Adviser(s) act as fiduciaries under ERISA or the Code, or both, with respect to any investment advice provided by the Financial Institution or the Adviser subject to the contract or, in the case of an ERISA plan, with respect to any investment recommendations regarding the Plan or participant or beneficiary account.

(c) *Impartial Conduct Standards.* The Financial Institution affirmatively states that it and its Advisers will adhere to the following standards and, they in fact, comply with the standards:

(1) When providing investment advice to the Retirement Investor, the Financial

Institution and the Adviser(s) provide investment advice that is, at the time of the recommendation, in the Best Interest of the Retirement Investor. As further defined in Section VIII(d), such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party;

(2) The recommended transaction will not cause the Financial Institution, Adviser or their Affiliates or Related Entities to receive, directly or indirectly, compensation for their services that is in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(3) Statements by the Financial Institution and its Advisers to the Retirement Investor about the recommended transaction, fees and compensation, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions, will not be materially misleading at the time they are made.

(d) *Warranties.* The Financial Institution affirmatively warrants, and in fact complies with, the following:

(1) The Financial Institution has adopted and will comply with written policies and procedures reasonably and prudently designed to ensure that its Advisers adhere to the Impartial Conduct Standards set forth in Section II(c);

(2) In formulating its policies and procedures, the Financial Institution has specifically identified and documented its Material Conflicts of Interest; adopted measures reasonably and prudently designed to prevent Material Conflicts of Interest from causing violations of the Impartial Conduct Standards set forth in Section II(c); and designated a person or persons, identified by name, title or function, responsible for addressing Material Conflicts of Interest and monitoring their Advisers' adherence to the Impartial Conduct Standards.

(3) The Financial Institution's policies and procedures require that neither the Financial Institution nor (to the best of its knowledge) any Affiliate or Related Entity use or rely upon quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation or other actions or incentives that are intended or would reasonably be expected to cause Advisers to make recommendations that are not in the Best Interest of the Retirement Investor. Notwithstanding the foregoing, this Section II(d)(3) does not prevent the Financial Institution, its Affiliates or Related Entities from providing Advisers with differential compensation (whether in type or amount, and including, but not limited to, commissions) based on investment decisions by Plans, participant or beneficiary accounts, or IRAs, to the extent that the Financial Institution's policies and procedures and incentive practices, when viewed as a whole, are reasonably and prudently designed to avoid a misalignment of the interests of Advisers with the interests of the Retirement Investors they serve as fiduciaries (such compensation practices can include differential compensation based on neutral factors tied to the differences in the services delivered to the Retirement Investor with respect to the different types of investments, as opposed to the differences in the amounts of Third Party Payments the Financial Institution receives in connection with particular investment recommendations).

(e) *Disclosures.* In the Best Interest Contract or in a separate single written disclosure provided to the Retirement Investor with the contract, or, with respect to ERISA plans, in another single written disclosure provided to the Plan prior to or at the same time as the execution of the recommended transaction, the Financial Institution clearly and prominently:

(1) States the Best Interest standard of care owed by the Adviser and Financial Institution to the Retirement Investor; informs the Retirement Investor of the services provided by the Financial Institution and the Adviser; and describes how the Retirement Investor will pay for services, directly or through Third Party Payments. If, for example, the Retirement Investor will pay through commissions or other forms of transaction-based payments, the contract or writing must clearly disclose that fact;

(2) Describes Material Conflicts of Interest; discloses any fees or charges the Financial Institution, its Affiliates, or the Adviser imposes upon the Retirement Investor or the Retirement Investor's account; and states the types of compensation that the Financial Institution, its Affiliates, and the Adviser expect to receive from third parties in connection with investments recommended to Retirement Investors;

(3) Informs the Retirement Investor that the Investor has the right to obtain copies of the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d), as well as the specific disclosure of costs, fees, and compensation, including Third Party Payments, regarding recommended transactions, as set forth in Section III(a), below, described in dollar amounts, percentages, formulas, or other means reasonably designed to present materially accurate disclosure of their scope, magnitude, and nature in sufficient detail to permit the Retirement Investor to make an informed judgment about the costs of the transaction and about the significance and severity of the Material Conflicts of Interest, and describes how the Retirement Investor can get the information, free of charge; provided that if the Retirement Investor's request is made prior to the transaction, the information must be provided prior to the transaction, and if the request is made after the transaction, the information must be provided within 30 business days after the request;

(4) Includes a link to the Financial Institution's Web site as required by Section III(b), and informs the Retirement Investor that: (i) Model contract disclosures updated as necessary on a quarterly basis are maintained on the Web site, and (ii) the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d) are available free of charge on the Web site;

(5) Discloses to the Retirement Investor whether the Financial Institution offers Proprietary Products or receives Third Party Payments with respect to any recommended investments; and to the extent the Financial Institution or Adviser limits investment recommendations, in whole or part, to Proprietary Products or investments that generate Third Party Payments, notifies the Retirement Investor of the limitations placed on the universe of investments that the Adviser may offer for purchase, sale, exchange, or holding by the Retirement Investor. The notice is insufficient if it merely states that the Financial Institution or Adviser "may" limit investment recommendations based on whether the investments are Proprietary Products or generate Third Party Payments, without specific disclosure of the extent to which recommendations are, in fact, limited on that basis;

(6) Provides contact information (telephone and email) for a representative of the Financial Institution that the Retirement Investor can use to contact the Financial

Institution with any concerns about the advice or service they have received; and, if applicable, a statement explaining that the Retirement Investor can research the Financial Institution and its Advisers using FINRA's BrokerCheck database or the Investment Adviser Registration Depository (IARD), or other database maintained by a governmental agency or instrumentality, or self-regulatory organization; and

(7) Describes whether or not the Adviser and Financial Institution will monitor the Retirement Investor's investments and alert the Retirement Investor to any recommended change to those investments, and, if so monitoring, the frequency with which the monitoring will occur and the reasons for which the Retirement Investor will be alerted.

(8) The Financial Institution will not fail to satisfy this Section II(e), or violate a contractual provision based thereon, solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, provided the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance with this Section II(e) requires Advisers and Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.

(f) *Ineligible Contractual Provisions.* Relief is not available under the exemption if a Financial Institution's contract contains the following:

(1) Exculpatory provisions disclaiming or otherwise limiting liability of the Adviser or Financial Institution for a violation of the contract's terms;

(2) Except as provided in paragraph (f)(4) of this Section, a provision under which the Plan, IRA or Retirement Investor waives or qualifies its right to bring or participate in a class action or other representative action in court in a dispute with the Adviser or Financial Institution, or in an individual or class claim agrees to an amount representing liquidated damages for breach of the contract; provided that, the parties may knowingly agree to waive the Retirement Investor's right to obtain punitive damages or rescission of recommended transactions to the extent such a waiver is permissible under applicable state or federal law; or

(3) Agreements to arbitrate or mediate individual claims in venues that are distant or that otherwise unreasonably limit the ability of the Retirement Investors to assert the claims safeguarded by this exemption.

(4) In the event that the provision on pre-dispute arbitration agreements for class or representative claims in paragraph (f)(2) of this Section is ruled invalid by a court of competent jurisdiction, this provision shall not be a condition of this exemption with respect to contracts subject to the court's jurisdiction unless and until the court's decision is reversed, but all other terms of the exemption shall remain in effect.

(g) *ERISA plans.* Section II(a) does not apply to recommendations to Retirement Investors regarding investments in Plans that are covered by Title I of ERISA. For such investment advice, relief under the exemption is conditioned upon the Adviser and Financial Institution complying with certain provisions of Section II, as follows:

(1) Prior to or at the same time as the execution of the recommended transaction, the Financial Institution provides the Retirement Investor with a written statement of the Financial Institution's and its Advisers' fiduciary status, in accordance with Section II(b).

(2) The Financial Institution and the Adviser comply with the Impartial Conduct Standards of Section II(c).

(3) The Financial Institution adopts policies and procedures incorporating the requirements and prohibitions set forth in Section II(d)(1)–(3), and the Financial Institution and Adviser comply with those requirements and prohibitions.

(4) The Financial Institution provides the disclosures required by Section II(e).

(5) The Financial Institution and Adviser do not in any contract, instrument, or communication: purport to disclaim any responsibility or liability for any responsibility, obligation, or duty under Title I of ERISA to the extent the disclaimer would be prohibited by ERISA section 410; purport to waive or qualify the right of the Retirement Investor to bring or participate in a class action or other representative action in court in a dispute with the Adviser or Financial Institution, or require arbitration or mediation of individual claims in locations that are distant or that otherwise unreasonably limit the ability of the Retirement Investors to assert the claims safeguarded by this exemption.

(h) *Level Fee Fiduciaries.* Sections II(a), (d), (e), (f), (g), III and V do not apply to recommendations by Financial Institutions and Advisers that are Level Fee Fiduciaries. For such investment advice, relief under the exemption is conditioned upon the Adviser and Financial Institution complying with certain other provisions of Section II, as follows:

(1) Prior to or at the same time as the execution of the recommended transaction, the Financial Institution provides the Retirement Investor with a written statement of the Financial Institution's and its Advisers' fiduciary status, in accordance with Section II(b).

(2) The Financial Institution and Adviser comply with the Impartial Conduct Standards of Section II(c).

(3)(i) In the case of a recommendation to roll over from an ERISA Plan to an IRA, the Financial Institution documents the specific reason or reasons why the recommendation was considered to be in the Best Interest of the Retirement Investor. This documentation must include consideration of the Retirement Investor's alternatives to a rollover, including leaving the money in his or her current employer's Plan, if permitted, and must take into account the fees and expenses associated with both the Plan and the IRA; whether the employer pays for some or all of the plan's administrative expenses; and the different levels of services and investments available under each option; and (ii) in the case of a recommendation to rollover from another IRA or to switch from a commission-based account to a level fee arrangement, the Level Fee Fiduciary documents the reasons that the arrangement is considered to be in the Best Interest of the Retirement Investor, including, specifically, the services that will be provided for the fee.

(i) *Bank Networking Arrangements.* An Adviser who is a bank employee, and a Financial Institution that is a bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), may receive compensation pursuant to a Bank Networking

Arrangement as defined in Section VIII(c), in connection with their provision of investment advice to a Retirement Investor, provided the investment advice adheres to the Impartial Conduct Standards set forth in Section II(c). The remaining conditions of the exemption do not apply.

Section III—Web and Transaction-Based Disclosure

The Financial Institution must satisfy the following conditions with respect to an investment recommendation, to be covered by this exemption:

(a) *Transaction Disclosure.* The Financial Institution provides the Retirement Investor, prior to or at the same time as the execution of the recommended investment in an investment product, the following disclosure, clearly and prominently, in a single written document, that:

(1) States the Best Interest standard of care owed by the Adviser and Financial Institution to the Retirement Investor; and describes any Material Conflicts of Interest;

(2) Informs the Retirement Investor that the Retirement Investor has the right to obtain copies of the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d), as well as specific disclosure of costs, fees and other compensation including Third Party Payments regarding recommended transactions. The costs, fees, and other compensation may be described in dollar amounts, percentages, formulas, or other means reasonably designed to present materially accurate disclosure of their scope, magnitude, and nature in sufficient detail to permit the Retirement Investor to make an informed judgment about the costs of the transaction and about the significance and severity of the Material Conflicts of Interest. The information required under this Section must be provided to the Retirement Investor prior to the transaction, if requested prior to the transaction, and, if the request is made after the transaction, the information must be provided within 30 business days after the request; and

(3) Includes a link to the Financial Institution's Web site as required by Section III(b) and informs the Retirement Investor that: (i) Model contract disclosures or other model notices, updated as necessary on a quarterly basis, are maintained on the Web site, and (ii) the Financial Institution's written description of its policies and procedures as required under Section III(b)(1)(iv) are available free of charge on the Web site.

(4) These disclosures do not have to be repeated for subsequent recommendations by the Adviser and Financial Institution of the same investment product within one year of the provision of the contract disclosure in Section II(e) or a previous disclosure pursuant to this Section III(a), unless there are material changes in the subject of the disclosure.

(b) *Web Disclosure.* For relief to be available under the exemption for any investment recommendation, the conditions of Section III(b) must be satisfied.

(1) The Financial Institution maintains a Web site, freely accessible to the public and updated no less than quarterly, which contains:

(i) A discussion of the Financial Institution's business model and the Material Conflicts of Interest associated with that business model;

(ii) A schedule of typical account or contract fees and service charges;

(iii) A model contract or other model notice of the contractual terms (if applicable) and required disclosures described in Section II(b)–(e), which are reviewed for accuracy no less frequently than quarterly and updated within 30 days if necessary;

(iv) A written description of the Financial Institution's policies and procedures that accurately describes or summarizes key components of the policies and procedures relating to conflict-mitigation and incentive practices in a manner that permits Retirement Investors to make an informed judgment about the stringency of the Financial Institution's protections against conflicts of interest;

(v) To the extent applicable, a list of all product manufacturers and other parties with whom the Financial Institution maintains arrangements that provide Third Party Payments to either the Adviser or the Financial Institution with respect to specific investment products or classes of investments recommended to Retirement Investors; a description of the arrangements, including a statement on whether and how these arrangements impact Adviser compensation, and a statement on any benefits the Financial Institution provides to the product manufacturers or other parties in exchange for the Third Party Payments;

(vi) Disclosure of the Financial Institution's compensation and incentive arrangements with Advisers including, if applicable, any incentives (including both cash and non-cash compensation or awards) to Advisers for recommending particular product manufacturers, investments or categories of investments to Retirement Investors, or for Advisers to move to the Financial Institution from another firm or to stay at the Financial Institution, and a full and fair description of any payout or compensation grids, but not including information that is specific to any individual Adviser's compensation or compensation arrangement.

(vii) The Web site may describe the above arrangements with product manufacturers, Advisers, and others by reference to dollar amounts, percentages, formulas, or other means reasonably calculated to present a materially accurate description of the arrangements. Similarly, the Web site may group disclosures based on reasonably-defined categories of investment products or classes, product manufacturers, Advisers, and arrangements, and it may disclose reasonable ranges of values, rather than specific values, as appropriate. But, however constructed, the Web site must fairly disclose the scope, magnitude, and nature of the compensation arrangements and Material Conflicts of Interest in sufficient detail to permit visitors to the Web site to make an informed judgment about the significance of the compensation practices and Material Conflicts of Interest with respect to transactions recommended by the Financial Institution and its Advisers.

(2) To the extent the information required by this Section is provided in other disclosures which are made public, including those required by the SEC and/or the Department such as a Form ADV, Part II, the Financial Institution may satisfy this Section III(b) by posting such disclosures to its Web site with an explanation that the information can be found in the disclosures and a link to where it can be found.

(3) The Financial Institution is not required to disclose information pursuant to this Section III(b) if such disclosure is otherwise prohibited by law.

(4) In addition to providing the written description of the Financial Institution's policies and procedures on its Web site, as required under Section III(b)(1)(iv), Financial Institutions must provide their complete policies and procedures adopted pursuant to Section II(d) to the Department upon request.

(5) In the event that a Financial Institution determines to group disclosures as described in subsection (1)(vii), it must retain the data and documentation supporting the group disclosure during the time that it is applicable to the disclosure on the Web site, and for six years after that, and make the data and documentation

available to the Department within 90 days of the Department's request.

(c)(1) The Financial Institution will not fail to satisfy the conditions in this Section III solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, or if the Web site is temporarily inaccessible, provided that, (i) in the case of an error or omission on the Web site, the Financial Institution discloses the correct information as soon as practicable, but not later than seven (7) days after the date on which it discovers or reasonably should have discovered the error or omission, and (ii) in the case of an error or omission with respect to the transaction disclosure, the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission.

(2) To the extent compliance with the Section III disclosures requires Advisers and Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (i) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution; or (ii) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.

(3) The good faith provisions of this Section apply to the requirement that the Financial Institution retain the data and documentation supporting the group disclosure during the time that it is applicable to the disclosure on the Web site and provide it to the Department upon request, as set forth in subsection (b)(1)(vii) and (b)(5) above. In addition, if such records are lost or destroyed, due to circumstances beyond the control of the Financial Institution, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and no party, other than the Financial Institution responsible for complying with subsection (b)(1)(vii) and (b)(5) will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the taxes imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or provided to the Department within the required timeframes.

Section IV—Proprietary Products and Third Party Payments

(a) *General.* A Financial Institution that at the time of the transaction restricts Advisers' investment recommendations, in whole or part, to Proprietary Products or to investments that generate Third Party Payments, may rely on this exemption provided all the applicable conditions of the exemption are satisfied.

(b) *Satisfaction of the Best Interest standard.* A Financial Institution that limits Advisers' investment recommendations, in whole or part, based on whether the investments are Proprietary Products or generate Third Party Payments, and an Adviser making recommendations subject to such limitations, shall be deemed to satisfy the Best Interest standard of Section VIII(d) if:

(1) Prior to or at the same time as the execution of the recommended transaction, the Retirement Investor is clearly and prominently informed in writing that the Financial Institution offers Proprietary Products or receives Third Party Payments with respect to the purchase, sale, exchange, or holding of recommended investments; and the Retirement Investor is informed in writing of the limitations placed on the universe of investments that the Adviser may recommend to the Retirement Investor. The notice is insufficient if it merely states that the Financial Institution or Adviser "may" limit investment recommendations based on whether the investments are Proprietary Products or generate Third Party Payments, without specific disclosure of the extent to which recommendations are, in fact, limited on that basis;

(2) Prior to or at the same time as the execution of the recommended transaction, the Retirement Investor is fully and fairly informed in writing of any Material Conflicts of Interest that the Financial Institution or Adviser have with respect to the recommended transaction, and the Adviser and Financial Institution comply with the disclosure requirements set forth in Section III above (providing for web and transaction-based disclosure of costs, fees, compensation, and Material Conflicts of Interest);

(3) The Financial Institution documents in writing its limitations on the universe of recommended investments; documents in writing the Material Conflicts of Interest associated with any contract, agreement, or arrangement providing for its receipt of Third Party Payments or associated with the sale or promotion of Proprietary Products; documents in writing any services it will provide to Retirement Investors in exchange for Third Party Payments, as well as any services or consideration it will furnish to any other party, including the payor, in exchange for the Third Party Payments; reasonably concludes that the limitations on the universe of recommended investments and Material Conflicts of Interest will not cause the Financial Institution or its Advisers to receive compensation in excess of reasonable compensation for Retirement Investors as set forth in Section II(c)(2); reasonably determines, after consideration of the policies and procedures established pursuant to Section II(d), that these limitations and Material Conflicts of Interest will not cause the Financial Institution or its Advisers to recommend imprudent investments; and documents in writing the bases for its conclusions;

(4) The Financial Institution adopts, monitors, implements, and adheres to policies and procedures and incentive practices that meet the terms of Section II(d)(1) and (2); and, in accordance with Section II(d)(3), neither the Financial Institution nor (to the best of its knowledge) any Affiliate or Related Entity uses or relies upon quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation or other actions or incentives that are intended or would reasonably be expected to cause the Adviser to make imprudent investment recommendations, to subordinate the interests of the Retirement Investor to the Adviser's own interests, or to make recommendations based on the Adviser's considerations of factors or interests other than the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor;

(5) At the time of the recommendation, the amount of compensation and other consideration reasonably anticipated to be paid, directly or indirectly, to the Adviser, Financial Institution, or their Affiliates or Related Entities for their services in connection with the recommended transaction is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and

(6) The Adviser's recommendation reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such

matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor; and the Adviser's recommendation is not based on the financial or other interests of the Adviser or on the Adviser's consideration of any factors or interests other than the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor.

Section V—Disclosure to the Department and Recordkeeping

This Section establishes record retention and disclosure conditions that a Financial Institution must satisfy for the exemption to be available for compensation received in connection with recommended transactions.

(a) *EBSA Disclosure*. Before receiving compensation in reliance on the exemption in Section I, the Financial Institution notifies the Department of its intention to rely on this exemption. The notice will remain in effect until revoked in writing by the Financial Institution. The notice need not identify any Plan or IRA. The notice must be provided by email to *e-BICE@dol.gov.*

(b) *Recordkeeping*. The Financial Institution maintains for a period of six (6) years, in a manner that is reasonably accessible for examination, the records necessary to enable the persons described in paragraph (c) of this Section to determine whether the conditions of this exemption have been met with respect to a transaction, except that:

(1) If such records are lost or destroyed, due to circumstances beyond the control of the Financial Institution, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party, other than the Financial Institution responsible for complying with this paragraph (c), will be subject to the civil penalty that may be assessed under ERISA section 502(i) or the taxes imposed by Code section 4975(a) and (b), if applicable, if the records are not maintained or are not available for examination as required by paragraph (c), below.

(c)(1) Except as provided in paragraph (c)(2) of this Section or precluded by 12 U.S.C. 484, and notwithstanding any provisions of ERISA section 504(a)(2) and (b), the records referred to in paragraph (b) of this Section are reasonably available at their customary location for examination during normal business hours by:

(i) Any authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Plan that engaged in an investment transaction pursuant to this exemption, or any authorized employee or representative of such fiduciary;

(iii) Any contributing employer and any employee organization whose members are covered by a Plan described in paragraph (c)(1)(ii), or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Plan described in paragraph (c)(1)(ii), IRA owner, or the authorized representative of such participant, beneficiary or owner; and

(2) None of the persons described in paragraph (c)(1)(ii)–(iv) of this Section are authorized to examine records regarding a recommended transaction involving another Retirement Investor, privileged trade secrets or privileged commercial or financial information of the Financial Institution, or information identifying other individuals.

(3) Should the Financial Institution refuse to disclose information on the basis that the information is exempt from disclosure, the Financial Institution must, by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

(4) Failure to maintain the required records necessary to determine whether the conditions of this exemption have been met will result in the loss of the exemption only for the transaction or transactions for which records are missing or have not been maintained. It does not affect the relief for other transactions.

Section VI—Exemption for Purchases and Sales, Including Insurance and Annuity Contracts

(a) *In general.* In addition to prohibiting fiduciaries from receiving compensation from third parties and compensation that varies based on their investment advice, ERISA and the Internal Revenue Code prohibit the purchase by a Plan, participant or beneficiary account, or IRA of an investment product, including insurance or annuity product from an insurance company that is a service provider to the Plan or IRA. This exemption permits a Plan, participant or beneficiary account, or IRA to engage in a purchase or sale with a Financial Institution that is a service provider or other party in interest or disqualified person to the Plan or IRA. This exemption is provided because investment transactions often involve prohibited purchases and sales involving entities that have a pre-existing party in interest relationship to the Plan or IRA.

(b) *Covered transactions.* The restrictions of ERISA section 406(a)(1)(A) and (D), and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D), shall not apply to the purchase or sale of an investment product by a Plan, participant or beneficiary account, or IRA, with a Financial Institution that is a party in interest or disqualified person.

(c) The following conditions are applicable to this exemption:

(1) The transaction is effected by the Financial Institution in the ordinary course of its business;

(2) The compensation, direct or indirect, for any services rendered by the Financial Institution and its Affiliates and Related Entities is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and

(3) The terms of the transaction are at least as favorable to the Plan, participant or beneficiary account, or IRA as the terms generally available in an arm's length transaction with an unrelated party.

(d) *Exclusions,* The exemption in this Section VI does not apply if:

(1) The Plan is covered by Title I of ERISA and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser and Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an affiliate thereof, that was selected to provide advice to the plan by a fiduciary who is not Independent.

(2) The compensation is received as a result of a Principal Transaction;

(3) The compensation is received as a result of investment advice to a Retirement Investor generated solely by an interactive Web site in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the Web site without any personal interaction or advice from an individual Adviser (*i.e.,* "robo-advice") unless the robo-advice provider is a Level Fee Fiduciary that complies with the conditions applicable to Level Fee Fiduciaries; or

(4) The Adviser has or exercises any discretionary authority or discretionary control with respect to the recommended transaction.

Section VII—Exemption for Pre-Existing Transactions

(a) *In general.* ERISA and the Internal Revenue Code prohibit Advisers, Financial Institutions and their Affiliates and Related Entities from receiving compensation that varies based on their investment advice. Similarly, fiduciary advisers are prohibited from receiving compensation from third parties in connection with their advice. Some Advisers and Financial Institutions did not consider themselves fiduciaries within the meaning of 29 CFR 2510–3.21 before the applicability date of the amendment to 29 CFR 2510–3.21 (the Applicability Date). Other Advisers and Financial Institutions entered into transactions involving Plans, participant or beneficiary accounts, or IRAs before the Applicability Date, in accordance with the terms of a prohibited transaction exemption that has since been amended. This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation, such as 12b-1 fees, in connection with a Plan's, participant or beneficiary account's or IRA's purchase, sale, exchange, or holding of securities or other investment property that was acquired prior to the Applicability Date, as described and limited below.

(b) *Covered transaction.* Subject to the applicable conditions described below, the restrictions of ERISA section 406(a)(1)(A), 406(a)(1)(D), and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), (E) and (F), shall not apply to the receipt of compensation by an Adviser, Financial Institution, and any Affiliate and Related Entity, as a result of investment advice (including advice to hold) provided to a Plan, participant or beneficiary or IRA owner in connection with the purchase, holding, sale, or exchange of securities or other investment property (i) that was acquired before the Applicability Date, or (ii) that was acquired pursuant to a recommendation to continue to adhere to a systematic purchase program established before the Applicability Date. This Exemption for Pre-Existing Transactions is conditioned on the following:

(1) The compensation is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date and that has not expired or come up for renewal post-Applicability Date;

(2) The purchase, exchange, holding or sale of the securities or other investment property was not otherwise a non-exempt prohibited transaction pursuant to ERISA section 406 and Code section 4975 on the date it occurred;

(3) The compensation is not received in connection with the Plan's, participant or beneficiary account's or IRA's investment of additional amounts in the previously acquired investment vehicle; except that for avoidance of doubt, the exemption does apply to a recommendation to exchange investments within a mutual fund family or variable annuity contract pursuant to an exchange privilege or rebalancing program that was established before the Applicability Date, provided that the recommendation does not result in the Adviser and Financial Institution, or their Affiliates or Related Entities, receiving more compensation (either as a fixed dollar amount or a percentage of assets) than they were entitled to receive prior to the Applicability Date;

(4) The amount of the compensation paid, directly or indirectly, to the Adviser, Financial Institution, or their Affiliates or Related Entities in connection with the transaction is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and

(5) Any investment recommendations made after the Applicability Date by the Financial Institution or Adviser with respect to the securities or other investment property reflect the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and are made without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party.

Section VIII—Definitions

For purposes of these exemptions:

(a) "Adviser" means an individual who:

(1) Is a fiduciary of the Plan or IRA by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction;

(2) Is an employee, independent contractor, agent, or registered representative of a Financial Institution; and

(3) Satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws with respect to the covered transaction, as applicable.

(b) "Affiliate" of an Adviser or Financial Institution means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution. For this purpose, "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(2) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Adviser or Financial Institution; and

(3) Any corporation or partnership of which the Adviser or Financial Institution is an officer, director, or partner.

(c) A "Bank Networking Arrangement" is an arrangement for the referral of retail non-deposit investment products that satisfies applicable federal banking, securities and insurance regulations, under which employees of a bank refer bank customers to an unaffiliated investment adviser registered under the Investment Advisers Act of 1940 or under the laws of the state in which the adviser maintains its principal office and place of business, insurance company qualified to do business under the laws of a state, or broker or dealer registered under the Securities Exchange Act of 1934, as amended. For purposes of this definition, a "bank" is a bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)),

(d) Investment advice is in the "Best Interest" of the Retirement Investor when the Adviser and Financial Institution providing the advice act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party. Financial Institutions that limit investment recommendations, in whole or part, based on whether the investments are Proprietary Products or generate Third Party Payments, and

Advisers making recommendations subject to such limitations are deemed to satisfy the Best Interest standard when they comply with the conditions of Section IV(b).

(e) "Financial Institution" means an entity that employs the Adviser or otherwise retains such individual as an independent contractor, agent or registered representative and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1));

(3) An insurance company qualified to do business under the laws of a state, provided that such insurance company:

(i) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended,

(ii) Has undergone and shall continue to undergo an examination by an Independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding 5 years, and

(iii) Is domiciled in a state whose law requires that actuarial review of reserves be conducted annually and reported to the appropriate regulatory authority;

(4) A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(5) An entity that is described in the definition of Financial Institution in an individual exemption granted by the Department under ERISA section 408(a) and Code section 4975(c), after the date of this exemption, that provides relief for the receipt of compensation in connection with investment advice provided by an investment advice fiduciary, under the same conditions as this class exemption.

(f) "Independent" means a person that:

(1) Is not the Adviser, the Financial Institution or any Affiliate relying on the exemption;

(2) Does not have a relationship to or an interest in the Adviser, the Financial Institution or Affiliate that might affect the exercise of the person's best judgment in connection with transactions described in this exemption; and

(3) Does not receive or is not projected to receive within the current federal income tax year, compensation or other consideration for his or her own account from the Adviser, Financial Institution or Affiliate in excess of 2% of the person's annual revenues based upon its prior income tax year.

(g) "Individual Retirement Account" or "IRA" means any account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.

(h) A Financial Institution and Adviser are "Level Fee Fiduciaries" if the only fee received by the Financial Institution, the Adviser and any Affiliate in connection with advisory or investment management services to the Plan or IRA assets is a Level Fee that is disclosed in advance to the Retirement Investor. A "Level Fee" is a fee or compensation that is provided on the basis of a fixed percentage of the value of the assets or a set fee that does not vary with the particular investment recommended, rather than a commission or other transaction-based fee.

(i) A "Material Conflict of Interest" exists when an Adviser or Financial Institution has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a fiduciary in rendering advice to a Retirement Investor.

(j) "Plan" means any employee benefit plan described in section 3(3) of ERISA and any plan described in section 4975(e)(1)(A) of the Code.

(k) A "Principal Transaction" means a purchase or sale of an investment product if an Adviser or Financial Institution is purchasing from or selling to a Plan, participant or beneficiary account, or IRA on behalf of the Financial Institution's own account or the account of a person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Financial Institution. For purposes of this definition, a Principal Transaction does not include the sale of an insurance or annuity contract, a mutual fund transaction, or a Riskless Principal Transaction as defined in Section VIII(p) below.

(l) "Proprietary Product" means a product that is managed, issued or sponsored by the Financial Institution or any of its Affiliates.

(m) "Related Entity" means any entity other than an Affiliate in which the Adviser or Financial Institution has an interest which may affect the exercise of its best judgment as a fiduciary.

(n) A "Retail Fiduciary" means a fiduciary of a Plan or IRA that is not described in section (c)(1)(i) of the Regulation (29 CFR 2510.3–21(c)(1)(i)).

(o) "Retirement Investor" means—

(1) A participant or beneficiary of a Plan subject to Title I of ERISA or described in section 4975(e)(1)(A) of the Code, with authority to direct the investment of assets in his or her Plan account or to take a distribution,

(2) The beneficial owner of an IRA acting on behalf of the IRA, or

(3) A Retail Fiduciary with respect to a Plan subject to Title I of ERISA or described in section 4975(e)(1)(A) of the Code or IRA.

(p) A "Riskless Principal Transaction" is a transaction in which a Financial Institution, after having received an order from a Retirement Investor to buy or sell an investment product, purchases or sells the same investment product for the Financial Institution's own account to offset the contemporaneous transaction with the Retirement Investor.

(q) "Third-Party Payments" include sales charges when not paid directly by the Plan, participant or beneficiary account, or IRA; gross dealer concessions; revenue sharing payments; 12b–1 fees; distribution, solicitation or referral fees; volume-based fees; fees for seminars and educational programs; and any other compensation, consideration or financial benefit provided to the Financial Institution or an Affiliate or Related Entity by a third party as a result of a transaction involving a Plan, participant or beneficiary account, or IRA.

Section IX—Transition Period for Exemption

(a) *In general.* ERISA and the Internal Revenue Code prohibit fiduciary advisers to Plans and IRAs from receiving compensation that varies based on their investment advice. Similarly, fiduciary advisers are prohibited from receiving compensation from third parties in connection with their advice. This transition period provides relief from the restrictions of ERISA section 406(a)(1)(D), and 406(b) and the sanctions imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(D), (E), and (F) for the period from April 10, 2017, to January 1, 2018 (the Transition Period) for Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive such otherwise prohibited compensation subject to the conditions described in Section IX(d).

(b) *Covered transactions.* This provision permits Advisers, Financial Institutions, and their Affiliates and Related Entities to receive compensation as a result of their provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) to a Retirement Investor, during the Transition Period.

(c) *Exclusions.* This provision does not apply if:

(1) The Plan is covered by Title I of ERISA, and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser or Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an Affiliate thereof, that was selected to provide advice to the Plan by a fiduciary who is not Independent;

(2) The compensation is received as a result of a Principal Transaction;

(3) The compensation is received as a result of investment advice to a Retirement Investor generated solely by an interactive Web site in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the Web site without any personal interaction or advice from an individual Adviser (*i.e.,* "robo-advice"); or

(4) The Adviser has or exercises any discretionary authority or discretionary control with respect to the recommended transaction.

(d) *Conditions.* The provision is subject to the following conditions:

(1) The Financial Institution and Adviser adhere to the following standards:

(i) When providing investment advice to the Retirement Investor, the Financial Institution and the Adviser(s) provide investment advice that is, at the time of the recommendation, in the Best Interest of the Retirement Investor. As further defined in Section VIII(d), such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party;

(ii) The recommended transaction does not cause the Financial Institution, Adviser or their Affiliates or Related Entities to receive, directly or indirectly, compensation for their services that is in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(iii) Statements by the Financial Institution and its Advisers to the Retirement Investor about the recommended transaction, fees and compensation, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions, are not materially misleading at the time they are made.

(2) *Disclosures.* The Financial Institution provides to the Retirement Investor, prior to or at the same time as, the execution of the recommended transaction, a single written disclosure, which may cover multiple transactions or all transactions occurring within the Transition Period, that clearly and prominently:

(i) Affirmatively states that the Financial Institution and the Adviser(s) act as fiduciaries under ERISA or the Code, or both, with respect to the recommendation;

(ii) Sets forth the standards in paragraph (d)(1) of this Section and affirmatively states that it and the Adviser(s) adhered to such standards in recommending the transaction;

(iii) Describes the Financial Institution's Material Conflicts of Interest; and

(iv) Discloses to the Retirement Investor whether the Financial Institution offers Proprietary Products or receives Third Party Payments with respect to any investment recommendations; and to the extent the Financial Institution or Adviser limits investment recommendations, in whole or part, to Proprietary Products or investments that generate Third Party Payments, notifies the Retirement Investor of the limitations placed on the universe of investment recommendations. The notice is insufficient if it merely states that the Financial Institution or Adviser "may" limit investment recommendations based on whether the investments are Proprietary Products or generate Third Party Payments, without specific disclosure of the extent to which recommendations are, in fact, limited on that basis.

(v) The disclosure may be provided in person, electronically or by mail. It does not have to be repeated for any subsequent recommendations during the Transition Period.

(vi) The Financial Institution will not fail to satisfy this Section IX(d)(2) solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, provided the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance with this Section IX(d)(2) requires Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know, or unless they should have known, that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.

(3) The Financial Institution designates a person or persons, identified by name, title or function, responsible for addressing Material Conflicts of Interest and monitoring Advisers' adherence to the Impartial Conduct Standards; and

(4) The Financial Institution complies with the recordkeeping requirements of Section V(b) and (c).

Signed at Washington, DC.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–16355 Filed 7–7–16; 4:15 pm]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–11713; Prohibited Transaction Exemption 2016–02]

ZRIN 1210–ZA25

Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs; Correction

AGENCY: Employee Benefits Security Administration (EBSA), U.S. Department of Labor.

ACTION: Technical corrections.

SUMMARY: This document makes technical corrections to the Department of Labor's Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Principal Transactions Exemption), which was published in the **Federal Register** on April 8, 2016. The Principal Transactions Exemption permits principal transactions and riskless principal transactions in certain investments between a plan, plan participant or beneficiary account, or an IRA, and a fiduciary that provides investment advice to the plan or IRA, under conditions to safeguard the interests of these investors. The corrections either fix typographical errors or make minor clarifications to provisions that might otherwise be confusing.

DATES:

Issuance date: These technical corrections are issued July 11, 2016, without further action or notice.

Applicability date: The Principal Transactions Exemption, as corrected herein, is applicable to transactions occurring on or after April 10, 2017.

FOR FURTHER INFORMATION CONTACT: Brian Shiker, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8824 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Principal Transactions Exemption was granted pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637 (October 27, 2011)). It was adopted by the Department in connection with the publication of a final regulation defining who is a fiduciary of an employee benefit plan under ERISA as a result of giving investment advice to a plan or its participants or beneficiaries (Regulation).[1] The Regulation also applies to the definition of a "fiduciary" of a plan (including an IRA) under the Code.

The Principal Transactions Exemption allows an individual investment advice fiduciary (an Adviser) and the firm that employs or otherwise contracts with the Adviser (a Financial Institution) to engage in principal transactions and riskless principal transactions involving certain investments, with plans, participant and beneficiary accounts, and IRAs. The exemption limits the type of investments that may be purchased or sold and contains conditions which the Adviser and Financial Institution must satisfy in order to rely on the exemption. To safeguard the interests of plans, participants and beneficiaries, and IRA owners, the exemption requires Financial Institutions to give the appropriate fiduciary of the plan or IRA owner a written statement in which the Financial Institution acknowledges its fiduciary status and that of its Advisers. The Financial Institution and Adviser must adhere to enforceable standards of fiduciary conduct and fair dealing when providing investment advice regarding the transaction to Retirement Investors. In the case of IRAs and non-ERISA plans, the exemption requires that these standards be set forth in an enforceable contract with the Retirement Investor. Under the exemption's terms, Financial Institutions are not required to enter into a contract with ERISA plan investors, but they are obligated to acknowledge fiduciary status in writing, and adhere to these same standards of fiduciary conduct, which the investors can effectively enforce pursuant to section 502(a)(2) and (3) of ERISA. Under this standards-based approach, the Adviser and Financial Institution must give prudent advice that is in the customer's Best Interest, avoid misleading statements, and seek to obtain the best execution reasonably available under the circumstances with respect to the transaction. Additionally, Financial Institutions must adopt policies and procedures reasonably designed to mitigate any harmful impact of conflicts of interest, and must disclose their conflicts of interest to Retirement Investors. Finally, Financial Institutions relying on the exemption must obtain the Retirement Investor's consent to participate in principal transactions and riskless principal transactions, and the Financial Institutions are subject to recordkeeping requirements.

Explanation of Corrections

This document makes technical corrections to the Principal Transactions Exemption as described below. In addition, the document adds an identifier, Prohibited Transaction Exemption 2016–02, to the heading of the Principal Transactions Exemption. For convenience, the text of the corrected exemption is reprinted in its entirety at the conclusion of this document. The preamble to the originally granted exemption provides a general overview of the exemption, at 81 FR 21089.

1. In the preamble discussion of the negative consent procedure for entering into the contract with existing contract holders, page 21102, the Principal Transactions Exemption states that "If the Retirement Investor does terminate the contract within that 30-day period, this exemption will provide relief for 14 days after the date on which the termination is received by the Financial Institution." However, Section II(a)(1)(ii) of the exemption text regarding the negative consent procedure, page 21134, inadvertently failed to include that sentence. Section II(a)(1)(ii) is corrected to insert that sentence as the second sentence of the section. This correction will provide certainty to parties relying on the Principal Transactions Exemption as to the period of relief following termination of the contract by any Retirement Investor.

2. The second sentence of Section IV(b) of the Principal Transactions Exemption, page 21136, repeated the phrase "in effect." The second sentence of Section IV(b) is corrected to delete the repetitive phrase.

3. The definition of "Adviser" in Section VI(a) of the Principal Transactions Exemption, page 21137, provided, in relevant part, that an Adviser "means an individual who: (1) Is a fiduciary of a Plan or IRA *solely* by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the Assets involved in the transaction (emphasis added)." In contrast, Section I(c)(1)(i) of the Principal Transactions Exemption, page 21133, excludes an Adviser that "has or exercises any discretionary authority or discretionary control respecting management of the assets of the Plan, participant or beneficiary account, or IRA involved in the transaction or exercises any discretionary authority or control respecting management or the disposition of the assets[.]" In using the word "solely" in Section VI(a), the Department did not intend to prevent Advisers from using the Principal Transactions Exemption if they have discretionary authority over other assets of the Plan or IRA that are not subject to the investment advice, or if they previously had, or subsequently gain, discretionary authority over assets of the Plan or IRA. To avoid any doubt as to the availability of the Principal Transactions Exemption under these circumstances, Section VI(a)(1) is corrected to delete the word "solely." In

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[1] 81 FR 20945 (April 8, 2016).

addition, Section VI(a)(1) used the term "Assets," which was intended to refer to the assets of the Plan or IRA, but was not a defined term in the exemption. Section VI(a)(1) is further corrected to replace the word "Assets" with the phrase "the assets of the Plan or IRA."

4. The definition of Financial Institution in Section VI(e)(1), (2) and (3) of the Principal Transactions Exemption, page 21137–8, sets forth the three types of entities that can be Financial Institutions under the exemption, separated by the conjunction "and" between subsection VI(e)(2) and (3). The Department did not intend to require that a Financial Institution satisfy each of subsections VI(e)(1), (2) and (3). For clarity, the conjunction "and" following subsection VI(e)(2) is deleted and replaced by the conjunction "or."

5. In the preamble discussion of the definition of Principal Traded Asset, page 21096, the exemption states that a Principal Traded Asset for purposes of the class exemption includes an investment that is permitted to be purchased under an individual exemption granted by the Department after the *issuance* date of the exemption, that provides relief for investment advice fiduciaries to engage in the purchase of the investment in a principal transaction or riskless principal transaction with a Plan or IRA under the same conditions as this exemption. However, Section VI(j) of the exemption text, page 21138, which defines Principal Traded Asset, incorrectly uses the term *effective* date rather than issuance date. Subsection VI(j)(iv) is corrected to replace the word "effective" with the word "issuance." This correction will provide certainty to parties relying on the Principal Transactions Exemption as to definition of the Principal Traded Asset.

Based on the limited, corrective purpose of these changes, the Department finds for good cause that notice and public comment procedure is unnecessary. These corrections have been made as part of a routine determination, and are expected to be insignificant in nature and impact. All of the corrections either fix typographical errors or clarify provisions that might otherwise be confusing. The corrections set forth in this document will not alter the analysis and data contained in the RIA applicable to the rulemaking nor alter the assessment of its costs and benefits. The Department's complete RIA is available at *https://www.dol.gov/ebsa/pdf/conflict-of-interest-ria.pdf.*

Paperwork Reduction Act Statement

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) in minimized, collection instructions are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

As discussed above, the Department is issuing technical corrections to its final Principal Transactions Exemption which was published in the **Federal Register** on April 8, 2016 (81 FR 21089). All of the corrections either fix typographical errors or make minor clarifications to provisions that might otherwise be confusing. The collections of information for the final exemption were approved under OMB control number 1210–0157, which is currently scheduled to expire on June 30, 2019.

In FR Doc. 2016–07926, appearing on page 21089 in the **Federal Register** of Friday, April 8, 2016, the following corrections are made. On pages 21133 through 21139, the Principal Transactions Exemption is corrected to read as follows:

Exemption

Section I—Exemption

(a) In general. ERISA and the Internal Revenue Code prohibit fiduciary advisers to employee benefit plans (Plans) and individual retirement plans (IRAs) from self-dealing, including receiving compensation that varies based on their investment recommendations. ERISA and the Code also prohibit fiduciaries from engaging in securities purchases and sales with Plans or IRAs on behalf of their own accounts (Principal Transactions). This exemption permits certain persons who provide investment advice to Retirement Investors (*i.e.,* fiduciaries of Plans, Plan participants or beneficiaries, or IRA owners) to engage in certain Principal Transactions and Riskless Principal Transactions as described below.

(b) Exemption. This exemption permits an Adviser or Financial Institution to engage in the purchase or sale of a Principal Traded Asset in a Principal Transaction or Riskless Principal Transaction with a Plan, participant or beneficiary account, or IRA, and receive a mark-up, mark-down or other similar payment as applicable to the transaction for themselves or any Affiliate, as a result of the Adviser's and Financial Institution's advice regarding the Principal Transaction or Riskless Principal Transaction. As detailed below, Financial Institutions and Advisers seeking to rely on the exemption must acknowledge fiduciary status, adhere to Impartial Conduct Standards in rendering advice, disclose Material Conflicts of Interest associated with Principal Transactions and Riskless Principal Transactions and obtain the consent of the Plan or IRA. In addition, Financial Institutions must adopt certain policies and procedures, including policies and procedures reasonably designed to ensure that individual Advisers adhere to the Impartial Conduct Standards; and retain certain records. This exemption provides relief from ERISA section 406(a)(1)(A) and (D) and section 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), and (E). The Adviser and Financial Institution must comply with the conditions of Sections II–V.

(c) Scope of this exemption: This exemption does not apply if:

(1) The Adviser: (i) Has or exercises any discretionary authority or discretionary control respecting management of the assets of the Plan, participant or beneficiary account, or IRA involved in the transaction or exercises any discretionary authority or control respecting management or the disposition of the assets; or (ii) has any discretionary authority or discretionary responsibility in the administration of the Plan, participant or beneficiary account, or IRA; or

(2) The Plan is covered by Title I of ERISA and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser or Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an Affiliate thereof, that was selected to provide investment advice to the plan by a fiduciary who is not Independent.

Section II—Contract, Impartial Conduct, and Other Conditions

The conditions set forth in this section include certain Impartial Conduct Standards, such as a Best Interest standard, that Advisers and Financial Institutions must satisfy to rely on the exemption. In addition, this section requires Financial Institutions to adopt anti-conflict policies and procedures that are reasonably designed to ensure that Advisers adhere to the Impartial Conduct Standards, and requires disclosure of important information about the Principal Transaction or Riskless Principal Transaction. With respect to IRAs and Plans not covered by Title I of ERISA, the Financial Institutions must agree that they and their Advisers will adhere to the exemption's standards in a written contract that is enforceable by the Retirement Investors. To minimize compliance burdens, the exemption provides that the contract terms may be incorporated into account opening documents and similar commonly-used agreements with new customers, and the exemption permits reliance on a negative consent process with respect to existing contract holders. The contract does not need to be executed before the provision of advice to the Retirement Investor to engage in a Principal Transaction or Riskless Principal Transaction. However, the contract must cover any advice given prior to the contract date in order for the exemption to apply to such advice. There is no contract requirement for recommendations to Retirement Investors about investments in Plans covered by Title I of ERISA, but the Impartial Conduct Standards and other requirements of Section II(b)–(e) must be satisfied in order for relief to be available under the exemption, as set forth in Section II(g). Section II(a) imposes the following conditions on Financial Institutions and Advisers:

(a) Contracts with Respect to Principal Transactions and Riskless Principal Transactions Involving IRAs and Plans Not Covered by Title I of ERISA. If the investment advice resulting in the Principal Transaction or Riskless Principal Transaction concerns an IRA or a Plan that is not covered by Title I, the advice is subject to an enforceable written contract on the part of the Financial Institution, which may be a master contract covering multiple recommendations, that is entered into in accordance with this Section II(a) and incorporates the terms set forth in Section II(b)–(d). The Financial Institution additionally must provide the disclosures required by Section II(e). The contract must cover advice rendered prior to the execution of the contract in order for the exemption to apply to such advice and related compensation.

(1) Contract Execution and Assent.

(i) New Contracts. Prior to or at the same time as the execution of the Principal Transaction or Riskless Principal Transaction, the Financial Institution enters into a written contract with the Retirement Investor acting on behalf of the Plan, participant or beneficiary account, or IRA, incorporating the terms required by Section II(b)–(d). The terms of the contract may appear in a standalone document or they may be incorporated into an investment advisory agreement, investment program agreement, account opening agreement, insurance or annuity contract or application, or similar document, or amendment thereto. The contract must be enforceable against the Financial Institution. The Retirement Investor's assent to the contract may be evidenced by handwritten or electronic signatures.

(ii) Amendment of Existing Contracts by Negative Consent. As an alternative to executing a contract in the manner set forth in the preceding paragraph, the Financial Institution may amend Existing Contracts to include the terms required in Section II(b)–(d) by delivering the proposed amendment and the disclosure required by Section II(e) to the Retirement Investor prior to January 1, 2018, and considering the failure to terminate the amended contract within 30 days as assent. If the Retirement Investor does terminate the contract within that 30-day period, this exemption will provide relief for 14 days after the date on which the termination is received by the Financial Institution. An Existing Contract is an investment advisory agreement, investment program agreement, account opening agreement, insurance contract, annuity contract, or similar agreement or contract that was executed before January 1, 2018, and remains in effect. If the Financial Institution elects to use the negative consent procedure, it may deliver the proposed amendment by mail or electronically, provided such means is reasonably calculated to result in the Retirement Investor's receipt of the proposed amendment, but it may not impose any new contractual obligations, restrictions, or liabilities on the Retirement Investor by negative consent.

(2) Notice. The Financial Institution maintains an electronic copy of the Retirement Investor's contract on the Financial Institution's Web site that is accessible by the Retirement Investor.

(b) Fiduciary. The Financial Institution affirmatively states in writing that the Financial Institution and the Adviser(s) act as fiduciaries under ERISA or the Code, or both, with respect to any investment advice regarding Principal Transactions and Riskless Principal Transactions provided by the Financial Institution or the Adviser subject to the contract, or in the case of an ERISA Plan, with respect to any investment advice regarding Principal Transactions and Riskless Principal Transactions between the Financial Institution and the Plan or participant or beneficiary account.

(c) Impartial Conduct Standards. The Financial Institution states that it and its Advisers agree to adhere to the following standards and, they in fact, comply with the standards:

(1) When providing investment advice to a Retirement Investor regarding the Principal Transaction or Riskless Principal Transaction, the Financial Institution and Adviser provide investment advice that is, at the time of the recommendation, in the Best Interest of the Retirement Investor. As further defined in Section VI(c), such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution, or any Affiliate or other party;

(2) The Adviser and Financial Institution seek to obtain the best execution reasonably available under the circumstances with respect to the Principal Transaction or Riskless Principal Transaction.

(i) Financial Institutions that are FINRA members shall satisfy this Section II(c)(2) if they comply with the terms of FINRA rules 2121 (Fair Prices and Commissions) and 5310 (Best Execution and Interpositioning), or any successor rules in effect at the time of the transaction, as interpreted by FINRA, with respect to the Principal Transaction or Riskless Principal Transaction.

(ii) The Department may identify specific requirements regarding best execution and/or fair prices imposed by another regulator or self-regulatory organization relating to additional Principal Traded Assets pursuant to Section VI(j)(1)(iv) in an individual exemption that may be satisfied as an alternative to the standard set forth in Section II(c)(2) above.

(3) Statements by the Financial Institution and its Advisers to the Retirement Investor about the Principal Transaction or Riskless Principal Transaction, fees and compensation related to the Principal Transaction or Riskless Principal Transaction, Material

Conflicts of Interest, and any other matters relevant to a Retirement Investor's decision to engage in the Principal Transaction or Riskless Principal Transaction, will not be materially misleading at the time they are made.

(d) Warranty. The Financial Institution affirmatively warrants, and in fact complies with, the following:

(1) The Financial Institution has adopted and will comply with written policies and procedures reasonably and prudently designed to ensure that its individual Advisers adhere to the Impartial Conduct Standards set forth in Section II(c);

(2) In formulating its policies and procedures, the Financial Institution has specifically identified and documented its Material Conflicts of Interest associated with Principal Transactions and Riskless Principal Transactions; adopted measures reasonably and prudently designed to prevent Material Conflicts of Interest from causing violations of the Impartial Conduct Standards set forth in Section II(c); and designated a person or persons, identified by name, title or function, responsible for addressing Material Conflicts of Interest and monitoring Advisers' adherence to the Impartial Conduct Standards;

(3) The Financial Institution's policies and procedures require that neither the Financial Institution nor (to the best of the Financial Institution's knowledge) any Affiliate uses or relies on quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation or other actions or incentives that are intended or would reasonably be expected to cause individual Advisers to make recommendations regarding Principal Transactions and Riskless Principal Transactions that are not in the Best Interest of the Retirement Investor. Notwithstanding the foregoing, the requirement of this Section II(d)(3) does not prevent the Financial Institution or its Affiliates from providing Advisers with differential compensation (whether in type or amount, and including, but not limited to, commissions) based on investment decisions by Plans, participant or beneficiary accounts, or IRAs, to the extent that the policies and procedures and incentive practices, when viewed as a whole, are reasonably and prudently designed to avoid a misalignment of the interests of Advisers with the interests of the Retirement Investors they serve as fiduciaries;

(4) The Financial Institution's written policies and procedures regarding Principal Transactions and Riskless Principal Transactions address how credit risk and liquidity assessments for Debt Securities, as required by Section III(a)(3), will be made.

(e) Transaction Disclosures. In the contract, or in a separate single written disclosure provided to the Retirement Investor or Plan prior to or at the same time as the execution of the Principal Transaction or Riskless Principal Transaction, the Financial Institution clearly and prominently:

(1) Sets forth in writing (i) the circumstances under which the Adviser and Financial Institution may engage in Principal Transactions and Riskless Principal Transactions with the Plan, participant or beneficiary account, or IRA, (ii) a description of the types of compensation that may be received by the Adviser and Financial Institution in connection with Principal Transactions and Riskless Principal Transactions, including any types of compensation that may be received from third parties, and (iii) identifies and discloses the Material Conflicts of Interest associated with Principal Transactions and Riskless Principal Transactions;

(2) Except for Existing Contracts, documents the Retirement Investor's affirmative written consent, on a prospective basis, to Principal Transactions and Riskless Principal Transactions between the Adviser or Financial Institution and the Plan, participant or beneficiary account, or IRA;

(3) Informs the Retirement Investor (i) that the consent set forth in Section II(e)(2) is terminable at will upon written notice by the Retirement Investor at any time, without penalty to the Plan or IRA, (ii) of the right to obtain, free of charge, copies of the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d), as well as information about the Principal Traded Asset, including its purchase or sales price, and other salient attributes, including, as applicable: The credit quality of the issuer; the effective yield; the call provisions; and the duration, provided that if the Retirement Investor's request is made prior to the transaction, the information must be provided prior to the transaction, and if the request is made after the transaction, the information must be provided within 30 business days after the request, (iii) that model contract disclosures or other model notice of the contractual terms which are reviewed for accuracy no less than quarterly and updated within 30 days as necessary are maintained on the Financial Institution's Web site, and (iv) that the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d) is available free of charge on the Financial Institution's Web site; and

(4) Describes whether or not the Adviser and Financial Institution will monitor the Retirement Investor's investments that are acquired through Principal Transactions and Riskless Principal Transactions and alert the Retirement Investor to any recommended change to those investments and, if so, the frequency with which the monitoring will occur and the reasons for which the Retirement Investor will be alerted.

(5) The Financial Institution will not fail to satisfy this Section II(e), or violate a contractual provision based thereon, solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, or if the Web site is temporarily inaccessible, provided that (i) in the case of an error or omission on the web, the Financial Institution discloses the correct information as soon as practicable, but not later than 7 days after the date on which it discovers or reasonably should have discovered the error or omission, and (ii) in the case of other disclosures, the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance with this requires Advisers and Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.

(f) Ineligible Contractual Provisions. Relief is not available under the exemption if a Financial Institution's contract contains the following:

(1) Exculpatory provisions disclaiming or otherwise limiting liability of the Adviser or Financial

Institution for a violation of the contract's terms;

(2) Except as provided in paragraph (f)(4) of this section, a provision under which the Plan, IRA or the Retirement Investor waives or qualifies its right to bring or participate in a class action or other representative action in court in a dispute with the Adviser or Financial Institution, or in an individual or class claim agrees to an amount representing liquidated damages for breach of the contract; provided that, the parties may knowingly agree to waive the Retirement Investor's right to obtain punitive damages or rescission of recommended transactions to the extent such a waiver is permissible under applicable state or federal law; or

(3) Agreements to arbitrate or mediate individual claims in venues that are distant or that otherwise unreasonably limit the ability of the Retirement Investors to assert the claims safeguarded by this exemption.

(4) In the event provision on pre-dispute arbitration agreements for class or representative claims in paragraph (f)(2) of this section is ruled invalid by a court of competent jurisdiction, this provision shall not be a condition of this exemption with respect to contracts subject to the court's jurisdiction unless and until the court's decision is reversed, but all other terms of the exemption shall remain in effect.

(g) ERISA Plans. For recommendations to Retirement Investors regarding Principal Transactions and Riskless Principal Transactions with Plans that are covered by Title I of ERISA, relief under the exemption is conditioned upon the Adviser and Financial Institution complying with certain provisions of Section II, as follows:

(1) Prior to or at the same time as the execution of the Principal Transaction or Riskless Principal Transaction, the Financial Institution provides the Retirement Investor with a written statement of the Financial Institution's and its Advisers' fiduciary status, in accordance with Section II(b).

(2) The Financial Institution and the Adviser comply with the Impartial Conduct Standards of Section II(c).

(3) The Financial Institution adopts policies and procedures incorporating the requirements and prohibitions set forth in Section II(d)(1)–(4), and the Financial Institution and Adviser comply with those requirements and prohibitions.

(4) The Financial Institution provides the disclosures required by Section II(e).

(5) The Financial Institution and Adviser do not in any contract, instrument, or communication purport to disclaim any responsibility or liability for any responsibility, obligation, or duty under Title I of ERISA to the extent the disclaimer would be prohibited by ERISA section 410, waive or qualify the right of the Retirement Investor to bring or participate in a class action or other representative action in court in a dispute with the Adviser or Financial Institution, or require arbitration or mediation of individual claims in locations that are distant or that otherwise unreasonably limit the ability of the Retirement Investors to assert the claims safeguarded by this exemption.

Section III—General Conditions

The Adviser and Financial Institution must satisfy the following conditions to be covered by this exemption:

(a) Debt Security Conditions. Solely with respect to the purchase of a Debt Security by a Plan, participant or beneficiary account, or IRA:

(1) The Debt Security being purchased was not issued by the Financial Institution or any Affiliate;

(2) The Debt Security being purchased is not purchased by the Plan, participant or beneficiary account, or IRA in an underwriting or underwriting syndicate in which the Financial Institution or any Affiliate is an underwriter or a member;

(3) Using information reasonably available to the Adviser at the time of the transaction, the Adviser determines that the Debt Security being purchased:

(i) Possesses no greater than a moderate credit risk; and

(ii) Is sufficiently liquid that the Debt Security could be sold at or near its carrying value within a reasonably short period of time.

(b) Arrangement. The Principal Transaction or Riskless Principal Transaction is not part of an agreement, arrangement, or understanding designed to evade compliance with ERISA or the Code, or to otherwise impact the value of the Principal Traded Asset.

(c) Cash. The purchase or sale of the Principal Traded Asset is for cash.

Section IV—Disclosure Requirements

This section sets forth the Adviser's and the Financial Institution's disclosure obligations to the Retirement Investor.

(a) Pre-Transaction Disclosure. Prior to or at the same time as the execution of the Principal Transaction or Riskless Principal Transaction, the Adviser or the Financial Institution informs the Retirement Investor, orally or in writing, of the capacity in which the Financial Institution may act with respect to such transaction.

(b) Confirmation. The Adviser or the Financial Institution provides a written confirmation of the Principal Transaction or Riskless Principal Transaction. This requirement may be satisfied by compliance with Rule 10b–10 under the Securities Exchange Act of 1934, or any successor rule in effect at the time of the transaction, or for Advisers and Financial Institutions not subject to the Securities Exchange Act of 1934, similar requirements imposed by another regulator or self-regulatory organization.

(c) Annual Disclosure. The Adviser or the Financial Institution sends to the Retirement Investor, no less frequently than annually, written disclosure in a single disclosure:

(1) A list identifying each Principal Transaction and Riskless Principal Transaction executed in the Retirement Investor's account in reliance on this exemption during the applicable period and the date and price at which the transaction occurred; and

(2) A statement that (i) the consent required pursuant to Section II(e)(2) is terminable at will upon written notice, without penalty to the Plan or IRA, (ii) the right of a Retirement Investor in accordance with Section II(e)(3)(ii) to obtain, free of charge, information about the Principal Traded Asset, including its salient attributes, (iii) model contract disclosures or other model notice of the contractual terms, which are reviewed for accuracy no less frequently than quarterly and updated within 30 days if necessary, are maintained on the Financial Institution's Web site, and (iv) the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d) are available free of charge on the Financial Institution's Web site.

(d) The Financial Institution will not fail to satisfy this Section IV solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, or if the Web site is temporarily inaccessible, provided that (i) in the case of an error or omission on the web, the Financial Institution discloses the correct information as soon as practicable, but not later than 7 days after the date on which it discovers or reasonably should have discovered the error or omission, and (ii) in the case of other disclosures, the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance with the disclosure requires Advisers and Financial Institutions to obtain information from entities that are not closely affiliated with them, the exemption provides that they may rely in good faith on information and assurances from the other entities, as long as they do not know that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.

(e) The Financial Institution prepares a written description of its policies and procedures and makes it available on its Web site and additionally, to Retirement Investors, free of charge, upon request. The description must accurately describe or summarize key components of the policies and procedures relating to conflict-mitigation and incentive practices in a manner that permits Retirement Investors to make an informed judgment about the stringency of the Financial Institution's protections against conflicts of interest. Additionally, Financial Institutions must provide their complete policies and procedures to the Department upon request.

Section V—Recordkeeping

This section establishes record retention and availability requirements that a Financial Institution must meet in order for it to rely on the exemption.

(a) The Financial Institution maintains for a period of six (6) years from the date of each Principal Transaction or Riskless Principal Transaction, in a manner that is reasonably accessible for examination, the records necessary to enable the persons described in Section V(b) to determine whether the conditions of this exemption have been met, except that:

(1) If such records are lost or destroyed, due to circumstances beyond the control of the Financial Institution, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party other than the Financial Institution that is engaging in the Principal Transaction or Riskless Principal Transaction shall be subject to the civil penalty that may be assessed under ERISA section 502(i) or to the taxes imposed by Code sections 4975(a) and (b) if the records are not maintained or are not available for examination as required by Section V(b).

(b)(1) Except as provided in Section V(b)(2) or as precluded by 12 U.S.C. 484, and notwithstanding any provisions of ERISA sections 504(a)(2) and 504(b), the records referred to in Section V(a) are reasonably available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) any fiduciary of the Plan or IRA that was a party to a Principal Transaction or Riskless Principal Transaction described in this exemption, or any duly authorized employee or representative of such fiduciary;

(iii) any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; and

(iv) any participant or beneficiary of the Plan, or the beneficial owner of an IRA.

(2) None of the persons described in subparagraph (1)(ii) through (iv) are authorized to examine records regarding a Prohibited Transaction involving another Retirement Investor, or trade secrets of the Financial Institution, or commercial or financial information which is privileged or confidential; and

(3) Should the Financial Institution refuse to disclose information on the basis that such information is exempt from disclosure, the Financial Institution must by the close of the thirtieth (30th) day following the request, provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information.

(4) Failure to maintain the required records necessary to determine whether the conditions of this exemption have been met will result in the loss of the exemption only for the transaction or transactions for which records are missing or have not been maintained. It does not affect the relief for other transactions.

Section VI—Definitions

For purposes of this exemption:

(a) "Adviser" means an individual who:

(1) Is a fiduciary of a Plan or IRA by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the transaction;

(2) Is an employee, independent contractor, agent, or registered representative of a Financial Institution; and

(3) Satisfies the applicable federal and state regulatory and licensing requirements of banking, and securities laws with respect to the covered transaction.

(b) "Affiliate" of an Adviser or Financial Institution means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution. For this purpose, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(2) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)) of the Adviser or Financial Institution; or

(3) Any corporation or partnership of which the Adviser or Financial Institution is an officer, director, or partner of the Adviser or Financial Institution.

(c) Investment advice is in the "Best Interest" of the Retirement Investor when the Adviser and Financial Institution providing the advice act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution, any Affiliate or other party.

(d) "Debt Security" means a "debt security" as defined in Rule 10b–10(d)(4) of the Exchange Act that is:

(1) U.S. dollar denominated, issued by a U.S. corporation and offered pursuant to a registration statement under the Securities Act of 1933;

(2) An "Agency Debt Security" as defined in FINRA rule 6710(l) or its successor;

(3) An "Asset Backed Security" as defined in FINRA rule 6710(m) or its successor, that is guaranteed by an Agency as defined in FINRA rule 6710(k) or its successor, or a Government Sponsored Enterprise as defined in FINRA rule 6710(n) or its successor; or

(4) A "U.S. Treasury Security" as defined in FINRA rule 6710(p) or its successor.

(e) "Financial Institution" means the entity that (i) employs the Adviser or otherwise retains such individual as an independent contractor, agent or registered representative, and (ii) customarily purchases or sells Principal Traded Assets for its own account in the ordinary course of its business, and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))); or

(3) A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(f) "Independent" means a person that:

(1) Is not the Adviser or Financial Institution or an Affiliate;

(2) Does not receive or is not projected to receive within the current federal income tax year, compensation or other consideration for his or her own account from the Adviser, Financial Institution or an Affiliate in excess of 2% of the person's annual revenues based upon its prior income tax year; and

(3) Does not have a relationship to or an interest in the Adviser, Financial Institution or an Affiliate that might affect the exercise of the person's best judgment in connection with transactions described in this exemption.

(g) "Individual Retirement Account" or "IRA" means any account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in Code section 408(a) and a health savings account described in Code section 223(d).

(h) A "Material Conflict of Interest" exists when an Adviser or Financial Institution has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a fiduciary in rendering advice to a Retirement Investor.

(i) "Plan" means an employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A).

(j) "Principal Traded Asset" means:

(1) for purposes of a purchase by a Plan, participant or beneficiary account, or IRA,

(i) a Debt Security, as defined in subsection (d) above;

(ii) a certificate of deposit (CD);

(iii) an interest in a Unit Investment Trust, within the meaning of Section 4(2) of the Investment Company Act of 1940, as amended; or

(iv) an investment that is permitted to be purchased under an individual exemption granted by the Department under ERISA section 408(a) and/or Code section 4975(c), after the issuance date of this exemption, that provides relief for investment advice fiduciaries to engage in the purchase of the investment in a Principal Transaction or a Riskless Principal Transaction with a Plan or IRA under the same conditions as this exemption; and

(2) for purposes of a sale by a Plan, participant or beneficiary account, or IRA, securities or other investment property.

(k) "Principal Transaction" means a purchase or sale of a Principal Traded Asset in which an Adviser or Financial Institution is purchasing from or selling to a Plan, participant or beneficiary account, or IRA on behalf of the Financial Institution's own account or the account of a person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Financial Institution. For purposes of this definition, a Principal Transaction does not include a Riskless Principal Transaction as defined in Section VI(m).

(l) "Retirement Investor" means:

(1) A fiduciary of a non-participant directed Plan subject to Title I of ERISA or described in Code section 4975(c)(1)(A) with authority to make investment decisions for the Plan;

(2) A participant or beneficiary of a Plan subject to Title I of ERISA or described in Code section 4975(c)(1)(A) with authority to direct the investment of assets in his or her Plan account or to take a distribution; or

(3) The beneficial owner of an IRA acting on behalf of the IRA.

(m) "Riskless Principal Transaction" means a transaction in which a Financial Institution, after having received an order from a Retirement Investor to buy or sell a Principal Traded Asset, purchases or sells the asset for the Financial Institution's own account to offset the contemporaneous transaction with the Retirement Investor.

Section VII—Transition Period for Exemption

(a) In general. ERISA and the Internal Revenue Code prohibit fiduciary advisers to employee benefit plans (Plans) and individual retirement plans (IRAs) from receiving compensation that varies based on their investment recommendations. ERISA and the Code also prohibit fiduciaries from engaging in securities purchases and sales with Plans or IRAs on behalf of their own accounts (Principal Transactions). This transition period provides relief from the restrictions of ERISA section 406(a)(1)(A) and (D) and section 406(b)(1) and (2), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), and (E) for the period from April 10, 2017, to January 1, 2018 (the Transition Period) for Advisers and Financial Institutions to engage in certain Principal Transactions and Riskless Principal Transactions with Plans and IRAs subject to the conditions described in Section VII(d).

(b) Covered transactions. This provision permits an Adviser or Financial Institution to engage in the purchase or sale of a Principal Traded Asset in a Principal Transaction or a Riskless Principal Transaction with a Plan, participant or beneficiary account, or IRA, and receive a mark-up, mark-down or other similar payment as applicable to the transaction for themselves or any Affiliate, as a result of the Adviser's and Financial Institution's advice regarding the Principal Transaction or the Riskless Principal Transaction, during the Transition Period.

(c) Exclusions. This provision does not apply if:

(1) The Adviser: (i) Has or exercises any discretionary authority or discretionary control respecting management of the assets of the Plan or IRA involved in the transaction or exercises any discretionary authority or control respecting management or the disposition of the assets; or (ii) has any discretionary authority or discretionary responsibility in the administration of the Plan or IRA; or

(2) The Plan is covered by Title I of ERISA, and (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Adviser or Financial Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an Affiliate thereof, that was selected to provide advice to the Plan by a fiduciary who is not Independent;

(d) Conditions. The provision is subject to the following conditions:

(1) The Financial Institution and Adviser adhere to the following standards:

(i) When providing investment advice to the Retirement Investor regarding the Principal Transaction or Riskless

Principal Transaction, the Financial Institution and the Adviser(s) provide investment advice that is, at the time of the recommendation, in the Best Interest of the Retirement Investor. As further defined in Section VI(c), such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate or other party;

(ii) The Adviser and Financial Institution will seek to obtain the best execution reasonably available under the circumstances with respect to the Principal Transaction or Riskless Principal Transaction. Financial Institutions that are FINRA members shall satisfy this requirement if they comply with the terms of FINRA rules 2121 (Fair Prices and Commissions) and 5310 (Best Execution and Interpositioning), or any successor rules in effect at the time of the transaction, as interpreted by FINRA, with respect to the Principal Transaction or Riskless Principal Transaction; and

(iii) Statements by the Financial Institution and its Advisers to the Retirement Investor about the Principal Transaction or Riskless Principal Transaction, fees and compensation related to the Principal Transaction or Riskless Principal Transaction, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's decision to engage in the Principal Transaction or Riskless Principal Transaction, are not materially misleading at the time they are made.

(2) Disclosures. The Financial Institution provides to the Retirement Investor, prior to or at the same time as the execution of the recommended Principal Transaction or Riskless Principal Transaction, a single written disclosure, which may cover multiple transactions or all transactions occurring within the Transition Period, that clearly and prominently:

(i) Affirmatively states that the Financial Institution and the Adviser(s) act as fiduciaries under ERISA or the Code, or both, with respect to the recommendation;

(ii) Sets forth the standards in paragraph (d)(1) of this section and affirmatively states that it and the Adviser(s) adhered to such standards in recommending the transaction; and

(iii) Discloses the circumstances under which the Adviser and Financial Institution may engage in Principal Transactions and Riskless Principal Transactions with the Plan, participant or beneficiary account, or IRA, and identifies and discloses the Material Conflicts of Interest associated with Principal Transactions and Riskless Principal Transactions.

(iv) The disclosure may be provided in person, electronically or by mail. It does not have to be repeated for any subsequent recommendations during the Transition Period.

(v) The Financial Institution will not fail to satisfy this Section VII(d)(2) solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, provided the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance with this Section VII(d)(2) requires Advisers and Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know, or unless they should have known, that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Adviser or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.

(3) The Financial Institution must designate a person or persons, identified by name, title or function, responsible for addressing Material Conflicts of Interest and monitoring Advisers' adherence to the Impartial Conduct Standards.

(4) The Financial Institution complies with the recordkeeping requirements of Section V(a) and (b).

Signed at Washington, DC.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–16354 Filed 7–7–16; 4:15 pm]

BILLING CODE 4510–29–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AP75

Authority To Solicit Gifts and Donations

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its National Cemeteries regulation on the prohibition of officials and employees of VA from soliciting contributions from the public or authorizing the use of their names, name of the Secretary, or the name of VA for the purpose of making a gift or donation to VA. The amended regulation gives the Under Secretary of Memorial Affairs (USMA), or his designee, authority to solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of VA by an individual or organization in any campaign or drive for donation of money or articles to VA for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

DATES: This direct final rule is effective on September 9, 2016, without further notice, unless VA receives a significant adverse comment by August 10, 2016. If we receive a significant adverse comment by August 10, 2016, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. See section on Administrative Procedure Act below.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to "RIN 2900–AP75—Authority to Solicit Gifts and Donations." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Howard, Chief of Staff, National Cemetery Administration (NCA), Department of Veterans Affairs, (40A), 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6215. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 2407 authorizes the Secretary of VA to "accept gifts, devises, or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery." In 1978, VA published implementing regulations for this authority at 38 CFR 1.603 (now redesignated as 38 CFR 38.603). 43 FR 26572 (June 21, 1978). Included in this regulation, at § 38.603(b), is a prohibition on the solicitation of contributions from the public by any VA official or employee. Unfortunately, as was common at the time, the proposed and final rulemaking documents provide less information regarding the rationale for the regulations than is commonly provided today, so the full rationale for this regulation, including the reason for the prohibition on solicitations, is no longer available. The prohibition is not contained in the statutory authority at section 2407, nor does the plain language of the statute indicate a rationale for the prohibition. VA is easing this restriction because it negatively impacts VA's ability to fully realize the potential of its authority to accept gifts and donations for the benefit of the national cemeteries.

The gift and donation acceptance authority at section 2407 is just one of several authorities under which VA may accept gifts or donations that advance the mission or enhance the services that VA provides. These authorities include, among others, 38 U.S.C. 521 (acceptance of funds to support recreational activities furthering the rehabilitation of disabled veterans); 2406 (gifts of land for national cemeteries); 8103 and 8104 (acceptance of land, interests in land, or facilities for use as medical facilities); and 8301 (acceptance of gifts for use in carrying out all laws administered by VA). None of these statutory authorities nor any implementing regulations for any of the authorities, includes a provision like that contained in § 38.603(b), prohibiting the solicitation of contributions.

Legal guidance indicates that such a prohibition is not required by law. In 2015, VA's Office of General Counsel (OGC) issued a precedent opinion concluding that VA's express statutory authority to accept gifts under section 8301 included the implied statutory authority to solicit those gifts. VAOPGCPREC 2–2015, Mar. 20, 2015. Outside VA, a 2001 opinion from the Office of Legal Counsel (OLC) of the Department of Justice found that the broad statutory authority granted by Congress in section 403(b)(1) of the Office of Government Ethics Authorization Act of 1996 to accept gifts implies the authority to solicit gifts. 25 Op. OLC 55, Jan. 19, 2001. VA believes that section 2407 similarly contains an implied statutory authority to solicit gifts and donations for the benefit of the national cemeteries and that, by prohibiting use of that implied statutory authority, the provision in § 38.603(b), in addition to not being legally necessary, may impede VA's ability to fully realize the authority provided to VA in section 2407. The ability of VA to operate other gift and donation programs under the authorities mentioned above, effectively and within legal parameters, in the absence of a prohibition on the ability of principals to solicit gifts and donations, indicates that a prohibition like that contained in § 38.603(b) is unnecessary.

Gifts and donations received by the national cemeteries under the authority of section 2407 have taken many forms, including monetary donations, donations of services and property (such as landscaping services or trees), and memorials and other commemorative works. Consistent with the plain language of the terms "gifts" and "donations," we clarify in the regulation that gifts and donations would include monetary donations, in-kind goods and services, and personal property. These gifts and donations from generous persons and organizations enhance the experience of visitors to the national cemeteries. The prohibition contained in § 38.603(b) impedes VA's ability to proactively advise donors or potential donors of gift and donation opportunities that could be beneficial to the national cemeteries. Although § 38.603(b) includes a provision that allows VA employees to discuss the "appropriateness" of a proposed gift, that discussion can only happen if a donor first approaches VA about a potential gift or donation. VA cannot proactively advise a donor that a particular gift or donation would be beneficial to the national cemeteries in general or any one national cemetery in particular. Easing the prohibition benefits not only the national cemeteries by ensuring that gifts and donations are more likely to be beneficial, but also is beneficial to donors who may not know of opportunities to provide beneficial gifts and donations to the national cemeteries. Therefore, we are amending § 38.603(b) to provide that the USMA, or his designee, may solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of VA by an individual or organization in any campaign or drive for money or articles to VA for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

While VA is easing the prohibition on solicitation of gifts and donations, the intent is not to remove the restriction in its entirety. VA maintains 133 national cemeteries, one national Veterans' burial ground, and 33 soldiers' lots and monument sites in 40 states and Puerto Rico, as national shrines, that is, places of honor and memory where visitors can sense the serenity, historic sacrifice, and nobility of purpose of those who have served in the military. The USMA is responsible for the operation of the national cemeteries and is in the best position to determine the appropriateness of any campaign to solicit gifts and donations. Although VA is replacing the existing provision at § 38.603(b) with revised text that allows the USMA or designee to solicit gifts and donations to VA for the purpose of beautifying, or for the benefit of, one or more national cemeteries, this rulemaking does not amend any other regulation governing solicitation or acceptance of gifts and donations under any other authority available to VA.

We are revising the authority citation for part 38 to include the statutory authority 38 U.S.C. 2407. We also add this statutory authority at the end of § 38.603.

Administrative Procedure Act

VA believes this rule is non-controversial and anticipates that it will not result in any significant adverse comments, and, therefore, is issuing this regulatory amendment as a direct final rule. VA is only minimizing the restriction to commensurate with statutory authority and legal guidance from VA's OGC and an opinion from DOJ's OLC. VA is publishing a separate, substantially identical proposed rule in the **Federal Register**, RIN 2900–AP74, that will serve as a proposal for the provisions in this direct final rule in the event that any significant adverse comment is received by VA.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without change. If VA receives a significant adverse comment, VA will publish a notice of receipt of a significant adverse comment in the **Federal Register** and withdraw the direct final rule. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment unless the comment states why the rule would be ineffective or unacceptable without the additional change.

Under direct final rule procedures, if no significant adverse comment is received within the comment period, this rule will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that VA received no significant adverse comment and restating the date on which the final rule will become effective. VA will also publish a notice in the **Federal Register** withdrawing the proposed rule, RIN 2900–AP74.

In the event that VA withdraws the direct final rule because of receipt of any significant adverse comment, VA will proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. VA will treat any comments received in response to the direct final rule as comments regarding the proposed rule as well. VA will consider such comments in developing a subsequent final rule. Likewise, VA will consider any significant adverse comment received in response to the proposed rule as a comment regarding the direct final rule as well.

VA has determined that it is not necessary to provide a 60-day comment period for this rulemaking because the rulemaking does not establish duties or benefits affecting members of the public, but merely makes a minor modification concerning the authority of certain officials or employees to solicit gifts and donations for the benefit of VA national cemeteries. VA has instead specified that comments must be received within 30 days after date of publication in the **Federal Register**.

Effect of Rulemaking

The Code of Federal Regulations, revised by this rulemaking, represents the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance will conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm,* by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers and titles affected by this document.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on June 30, 2016, for publication.

Dated: June 30, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR part 38 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. Revise the authority citation for part 38 to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. In § 38.603, revise paragraph (b) and add an authority citation to read as follows:

§ 38.603 Gifts and donations.

* * * * *

(b) The Under Secretary of Memorial Affairs, or his designee, may solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for donation of money or articles to the Department of Veterans Affairs for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

Authority: 38 U.S.C. 2407.

[FR Doc. 2016–16234 Filed 7–8–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0045; FRL–9948–84–Region 7]

Approval of Iowa's Air Quality Implementation Plans; Polk County Board of Health Rules and Regulations, Chapter V, Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision submitted by the State of Iowa. The purpose of these revisions is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. This final action will reflect updates to the Iowa's statewide rules previously approved by EPA and will ensure consistency between applicable local agency rules and Federally-approved rules.

DATES: This final rule is effective on August 10, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2016–0045. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *http://www.regulations.gov* and at EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional information and general guidance, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7039, or by email at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. EPA's Response to Comments
IV. What action is EPA taking?

I. What is being addressed in this document?

The State of Iowa requested EPA approval of revisions to the local agency's rules and regulations, Chapter V, Air Pollution, as a revision to the State Implementation Plan (SIP). In order for the local program's Air Pollution rules to be incorporated into the Federally-enforceable SIP, on behalf of the local agency, the state must submit the formally adopted regulations and control strategies, which are consistent with the state and Federal requirements, to EPA for inclusion in the SIP. The regulation adoption process generally includes public notice, a public comment period and a public hearing, and formal adoption of the rule by the state authorized rulemaking body. In this case, that rulemaking body is the local agency. After the local agency formally adopts the rule, the local agency submits the rulemaking to the state, and then the state submits the rulemaking to EPA for consideration for formal action (inclusion of the rulemaking into the SIP). EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state's submission.

EPA received the request from the state to adopt revisions to the local air agency rules into the SIP on December 8, 2015. The revisions were adopted by the local agency on October 6, 2015, and became effective on October 12, 2015. EPA is approving the requested revisions to the Iowa SIP relating to the following:

- Article I. In General, Section 5–1. Purpose and Ambient Air Quality Standards;
- Article I. In General, Section 5–2. Definitions;
- Article X. Permits, Division 1. Construction Permits, Section 5–33. Exemptions from Permit Requirements;
- Article X. Permits, Division 2. Operating Permits, Section 5–39. Exemptions from Permit Requirement.

EPA's action does not cover revisions to:

- Article VI. Emission of Air Contaminants from Industrial Processes, New Source Performance Standards, Section 5–16(n),
- Article VIII. National Emission Standards for Hazardous Air Pollutants for Source Categories, Section 5–16(p), and,
- Article VIII. National Emission Standards for Hazardous Air Pollutants for Source Categories, Section 5–20.

EPA is also approving the definition of Maximum Achievable Control Technology (MACT) that was inadvertently omitted from the January 12, 2015, **Federal Register** notice that approved the September 2013 revisions to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. 80 FR 1471. The definition of MACT is not referenced elsewhere in Polk County's Federally approved rules.[1]

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

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[1] Chapter V, Subchapter 5–20 National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories is not Federally approved.

III. EPA's Response to Comments

The public comment period on EPA's proposed regulation opened February 16, 2016, the date of its publication in the **Federal Register**, and closed on March 18, 2016. (81 FR 8030). During this period, EPA received one comment, with two separate issues, that are addressed as follows:

Comment: First, the commenter stated that it was not clear if the Polk County local air agency issues Prevention of Significant (PSD) permits for Polk County or if the state agency issues PSD permits. Second, the commenter stated that the SIP submission contained an illegal startup, shutdown, malfunction (SSM) exemption and that EPA could not approve the SIP submission until the SSM exemption was removed.

Response to comment: First, Iowa has a delegated PSD program that is not delegated to local air agencies. 72 FR 27056, May 14, 2007. PSD permits are only issued by the Iowa Department of Natural Resources. No changes will be made in response to this comment.

Second, in response to the commenter's concern that the SIP contains an illegal SSM exemption in Article VI, Section 5–17(a) of the Polk County Board of Health Rules and Regulations, the revisions to the Iowa SIP that EPA is approving are definitions and construction permitting exemptions that do not relate to automatic exemptions from otherwise applicable SIP emissions limitations during periods of startup, shutdown or malfunction. In addition, in response to the commenter's concern, Iowa requested that the EPA not act on a reference in the Polk County Board of Health Rules and Regulations to 567 Iowa Administrative Code (IAC) Chapter 24, as a subsection of that provision is subject to EPA's June 12, 2015 SSM SIP Call. 80 FR 33839.

IV. What action is EPA taking?

EPA is taking final action to approve this SIP revision to update the Polk County board of Health Rules and Regulations, Chapter V, Air Pollution. This final action will reflect updates to the Iowa's statewide rules previously approved by EPA and will ensure consistency between applicable local agency rules and Federally-approved rules.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Iowa Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for "Chapter V" under the heading "Polk County" to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
*	*	*	*	* * *
Polk County				
Chapter V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	10/12/15	7/11/16, [*Insert **Federal Register** citation*].	Article I, Section 5–2, definition of "variance," "anaerobic lagoon," and "greenhouse gases"; Article III, Incineration and Open Burning, Section 5–7(d) Variance Application; Article VI, Sections 5–16(n), (o) and (p); Article VIII; Article IX, Sections 5–27(3) and (4); Article X, Section 5–28, subsections (a) through (c), and Article X, Section 5–35(b)(5); Article XIII; and Article XVI, Section 5–75 are not part of the SIP. Article VI, Section 5–17, adopted by Polk County on 7/26/2011, is not part of the SIP, and the previously approved version of Article VI, Section 5–17 remains part of the SIP.

* * * * *

[FR Doc. 2016–16262 Filed 7–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2015–0810; FRL–9947–33]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of May 16, 2016 for 55 chemical substances that were the subject of premanufacture notices (PMNs). For the chemical substance identified generically as aluminum calcium oxide salt (PMN P–15–328), EPA inadvertently omitted the *de minimus* exemption from the worker protection requirements. Also for the same chemical substance, a typographical error has been identified within the hazard communication program requirements. This document corrects the omission and the typographical error.

DATES: This correction is effective July 15, 2016.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0810, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the May 16, 2016 final rule a list of those who may be potentially affected by this action.

II. What does this correction do?

EPA issued a final rule in the **Federal Register** of May 16, 2016 (81 FR 30477) (FRL–9944–77) for significant new uses for 55 chemical substances that were the subject of PMN notices. EPA omitted the *de mimimus* exemption of 1.0% from the worker protection requirements for § 721.10908(a)(2)(i). EPA also, within the hazard communication program requirements for § 721.10908(a)(2)(ii), misspelled a word. In that section, the word "trhough" should read "through." This action corrects the omission and the typographical error.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an

Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this correction final without prior proposal and opportunity for comment. The TSCA section 5(e) consent order for P–15–378 that is the basis for the SNUR at § 721.10908 contains the *de minimus* exemption of 1.0% that is missing from the worker protection requirements for § 721.10908(a)(2)(i). The typographical error corrects a spelling mistake for the word "through." EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

No. For a detailed discussion concerning the statutory and executive order review, refer to Unit XII. of the May 16, 2016 final rule.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

In FR Doc. 2016–11121, published in the **Federal Register** of May 16, 2016 (81 FR 30452), make the following correction:

■ 1. On page, 30477, in the second and third columns, in § 721.10908, paragraphs (a)(2)(i) introductory text and (a)(2)(ii) are corrected to read as follows:

§ 721.10908 Aluminum calcium oxide salt (generic).

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an Assigned Protection Factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

* * * * *

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a) through (f)(concentration set at 1.0 percent), (g)(1)(ii), (g)(2) (When using this substance avoid breathing the substance, and use respiratory protection, or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 5 mg/m^3.) and (g)(5).

* * * * *

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 23, 2016.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–15728 Filed 7–8–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357–5999–02]

RIN 0648–XE586

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group Retention Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 3 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 45 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2016 fishing season or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on July 15, 2016, through the end of the 2016 fishing season on December 31, 2016, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: Atlantic shark fisheries are managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Atlantic shark fisheries have separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except for the shark research fishery for LCS and sandbar sharks, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limit in the shark fisheries during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria and other relevant factors. (*See* 635.24(a)(8)(i)–(vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention limit of the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders will allow use of available aggregated LCS and hammerhead shark management group quotas and will provide fishermen throughout the Atlantic region equitable fishing opportunities for the rest of the year. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 3 to 45 LCS other than sandbar shark per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i)–(vi), as follows:

(i) The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports.

Based on dealer reports through June 17, 2016, 38.8 mt dw or 23 percent of the 168.9 mt dw shark quota for aggregated LCS and 8.9 mt dw or 33 percent of the 27.1 mt dw shark quota for the hammerhead management groups have been harvested in the Atlantic region. This means that approximately 77 percent of the aggregated LCS quota remains available and approximately 67 percent of the hammerhead shark quota remains available. NMFS took action previously this year to reduce retention rates, considering the need for all regions to have an equitable opportunity to utilize the quota. Given the geographic distribution of the sharks at this time of year (*i.e.*, they are heading north before moving south again later in the year), the retention limit needs to be adjusted upwards now to ensure that fishermen in the Atlantic region have an opportunity to fully utilize the quotas in the region for the remainder of the year.

(ii) The catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports.

Based on the current commercial retention limit and average catch rate of landings data from dealer reports, the amount of aggregated LCS and hammerhead sharks harvested in the Atlantic region on a daily basis is low. Using current catch rates, projections indicate that landings would not exceed 80 percent of the quota before the end of the 2016 fishing season. In other words, this daily average catch rate means that aggregated LCS and hammerhead sharks are being harvested too slowly to promote fishing opportunities and ensure full utilization of the quota in the Atlantic region.

(iii) Estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates.

Once the landings reach 80 percent of either the aggregated LCS or hammerhead shark quotas, NMFS would, as required by the regulations, close the aggregated LCS and hammerhead shark management groups since they are "linked quotas." Current low catch rates would likely result in the fisheries remaining open to the remainder of the year with the quotas being underutilized in the Atlantic region.

(iv) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Adjusting the retention limit by increasing the retention limit on aggregated LCS and hammerhead management group in the Atlantic region from 3 to 45 LCS other than sandbar sharks per vessel per trip would allow for fishing opportunities later in the year consistent with the FMP's objectives to ensure equitable fishing opportunities throughout the fishing season and to limit bycatch and discards.

(v) Variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge.

The directed shark fisheries in the Atlantic region exhibit a mixed species composition, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate the sharks move farther north in the summer and then return south in the fall. Increasing the retention limit in the Atlantic region at this time provides for fishing opportunities by fishermen farther north as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. As a result, by increasing the harvest and landings on a per-trip basis, fishermen throughout the region will likely experience equitable fishing opportunities.

(vi) Effects of catch rates in one part of a region or sub-region precluding vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota.

NMFS has previously provided notice to the regulated community (80 FR 74999; December 1, 2015, and 81 FR 18541; March 31, 2016) that a goal of this year's fishery is to ensure fishing opportunities throughout the fishing season and fishing region. While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas are being harvested too slowly and would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, NMFS estimates that the fishery would still remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a portion of the quota.

On December 1, 2015 (80 FR 74999), NMFS announced in a final rule that the aggregated LCS and hammerhead shark fisheries management groups for the Atlantic region would open on January 1 with a quota of 168.9 metric tons (mt) dressed weight (dw) (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively. We had published a proposed rule on August 18, 2015 (80 FR 49974) and accepted public comment. In the final rule, NMFS also announced that if it appeared that the quota is being harvested too quickly, thus precluding fishing opportunities throughout the entire region (*e.g.*, if approximately 20 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks and then later consider increasing to 45 LCS other than sandbar sharks per vessel per trip around July 15, 2016, consistent with the applicable regulatory requirements. In March 2016, dealer reports indicated that landings had exceeded 20 percent of the quota, and NMFS therefore reduced the commercial Atlantic aggregated LCS and hammerhead shark retention limit from 36 to 3 LCS other than sandbar per vessel per trip on April 2, 2016 (81 FR 18541; March 31, 2016) after considering the inseason retention limit adjustment criteria listed in § 635.24(a)(8). Based on dealer reports through June 17, 2016, approximately 77 percent and 67 percent of the aggregated LCS and hammerhead shark quotas remain, respectively. At this point in the season, fishermen in the Atlantic region may not have an opportunity to fully utilize the quotas in the region for the remainder of the year if the retention limits are not increased, and available quota will be underutilized.

Accordingly, as of July 15, 2016, NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 3 LCS other than sandbar sharks per vessel per trip to 45 LCS other than sandbar sharks per vessel per trip. This retention limit adjustment does not apply to directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and "no sale" provisions apply (§ 635.22(a) and (c)), or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

All other retention limits and shark fisheries in the Atlantic region remain unchanged. This retention limit will remain at 45 LCS other than sandbar sharks per vessel per trip for the rest of the 2016 fishing season, or until NMFS announces via a notice in the **Federal Register** another adjustment to the retention limit or a fishery closure, is warranted.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Prior notice is impracticable because the regulatory criteria for inseason retention limit adjustments are intended to allow the agency to respond quickly to existing management considerations, including remaining available shark quotas, estimated dates for the fishery closures, the regional variations in the shark fisheries, and equitable fishing opportunities. Additionally, regulations implementing Amendment 6 of the 2006 Atlantic Consolidated HMS FMP (80 FR 50074, August 18, 2006) intended that the LCS retention limit could be adjusted quickly throughout the fishing season to provide management flexibility for the shark fisheries and provide equitable fishing opportunities to fishermen throughout a region. Based on available shark quotas and informed by shark landings in previous seasons, responsive adjustment to the LCS commercial retention limit from the incidental level is warranted as quickly as possible to allow fishermen to take advantage of available quotas while sharks are present in their region. For such adjustment to be practicable, it must occur in a timeframe that allows fishermen to take advantage of it.

Adjustment of the LCS fisheries retention limit in the Atlantic region will begin on July 15. Prior notice would result in a later enactment date and would be contrary to the public interest. Delays in increasing the retention limit would adversely affect those shark fishermen that would otherwise have an opportunity to harvest more than the current retention limit of 3 LCS other than sandbar sharks per vessel per trip and could result in low catch rates and underutilized quotas. Analysis of available data shows that adjustment to the LCS commercial retention limit upward to 45 would result in minimal risks of exceeding the aggregated LCS and hammerhead shark quotas in the Atlantic region based on our consideration of previous years' data, in which the fisheries have opened in July. With quota available and with no measurable impacts to the stock expected, it would be contrary to the public interest to require vessels to wait to harvest the sharks otherwise allowable through this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Adjustment of the LCS commercial retention limit in the Atlantic region is effective July 15, 2016, to minimize any unnecessary disruption in fishing patterns, to allow the impacted fishermen to benefit from the adjustment, and to not preclude fishing opportunities by fishermen farther north as the sharks are likely going to be in the northern areas of the region for only a short period of time before migrating south again. Foregoing opportunities to harvest the respective quotas could have negative social and economic impacts for U.S. fishermen that depend upon catching the available quotas. Therefore, the AA finds there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–16299 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 132
Monday, July 11, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2014–0092]

RIN 0579–AE17

Importation of Lemons From Northwest Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for a proposed rule to allow the importation of lemons from northwest Argentina into the continental United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before August 10, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0092.*
- *Postal Mail/Commercial Delivery:* Send your comments to Docket No. APHIS–2014–0092, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0092* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Juan A. (Tony) Román, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2242.

SUPPLEMENTARY INFORMATION: On May 10, 2016, we published in the **Federal Register** (81 FR 28758–28764, Docket No. APHIS–2014–0092) a proposed rule to authorize the importation of lemons from northwest Argentina into the United States.

Comments on the proposed rule were required to be received on or before July 11, 2016. We are extending the comment period on Docket No. APHIS–2014–0092 for an additional 30 days. As a result of this extension, comments are now due on or before August 10, 2016. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of July 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–16363 Filed 7–8–16; 8:45 am]

BILLING CODE 3410–34–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1016

[Docket No. CFPB–2016–0032]

RIN 3170–AA60

Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation P, which requires, among other things, that financial institutions provide an annual notice describing their privacy policies and practices to their customers. The amendment would implement a December 2015 statutory amendment to the Gramm-Leach-Bliley Act providing an exception to this annual notice requirement for financial institutions that meet certain conditions.

DATES: Comments must be received on or before August 10, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0032 or RIN 3170–AA60, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joseph Devlin and Nora Rigby, Counsels; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Title V, Subtitle A of the Gramm-Leach-Bliley Act (GLBA)[1] and Regulation P, which implements the GLBA, mandate that financial institutions provide their customers with annual notices regarding those institutions' privacy policies. If financial institutions share certain consumer information with particular types of third parties, the annual notices must also provide customers with an opportunity to opt out of the sharing. Regulation P sets forth requirements for how financial institutions must deliver these annual privacy notices. In certain circumstances, Regulation P permits financial institutions to use an alternative delivery method to provide annual notices. This method requires, among other things, that the annual notice be posted on a financial institution's Web site.

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[1] 15 U.S.C. 6801 through 6809.

On December 4, 2015, Congress amended the GLBA as part of the Fixing America's Surface Transportation Act (FAST Act). This amendment, titled Eliminate Privacy Notice Confusion,[2] added new GLBA section 503(f). This subsection provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers. Section 503(f)(1) requires that to qualify for this exception, a financial institution must not share nonpublic personal information about customers except as described in certain statutory exceptions. (Sharing as described in these specified statutory exceptions does not trigger the customer's statutory right to opt out of the financial institution's sharing.) In addition, section 503(f)(2) requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice it sent.

The Bureau proposes to amend Regulation P to implement this GLBA amendment. As part of its implementing proposal, the Bureau also proposes to amend Regulation P to provide timing requirements for delivery of annual privacy notices if a financial institution that qualified for this annual notice exception later changes its policies or practices in such a way that it no longer qualifies for the exception. The Bureau further proposes to remove the Regulation P provision that allows for use of the alternative delivery method for annual privacy notices because the Bureau believes the alternative delivery method will no longer be used in light of the annual notice exception. Finally, the Bureau proposes to amend Regulation P to make a technical correction to one of its definitions.

II. Background

A. The Statute and Regulation

The GLBA was enacted into law in 1999 and governs the privacy practices of a broad range of financial institutions.[3] Rulemaking authority to implement the GLBA privacy provisions was initially spread among many agencies. The Federal Reserve Board (Board), the Office of Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) jointly adopted final rules in 2000 to implement the notice requirements of the GLBA.[4] The National Credit Union Administration (NCUA), Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC) were part of the same interagency process, but each of these agencies issued separate rules.[5] In 2009, all of the agencies with the authority to issue rules to implement the GLBA privacy provisions issued a joint final rule with a model form that financial institutions could use, at their option, to provide required initial and annual disclosures.[6]

In 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[7] transferred GLBA privacy notice rulemaking authority from the Board, NCUA, OCC, OTS, the FDIC, and the FTC (in part) to the Bureau.[8] The Bureau then restated the implementing regulations in Regulation P, 12 CFR part 1016, in late 2011.[9]

The Bureau has the authority to promulgate GLBA privacy rules for depository institutions and many non-depository institutions. However, rulewriting authority with regard to securities and futures-related companies is vested in the SEC and CFTC, respectively, and rulewriting authority with respect to certain motor vehicle dealers is vested in the FTC.[10] The four agencies are required to consult with each other and with representatives of State insurance authorities to assure, to the extent possible, consistency and comparability between implementing rules.[11] Toward that end, the Bureau has consulted and coordinated with these agencies and with the National Association of Insurance Commissioners (NAIC) concerning this proposed rule. The Bureau has also consulted with prudential regulators and other appropriate Federal agencies, as required under Section 1022 of the Dodd-Frank Act as part of its general rulewriting process.[12]

The GLBA and Regulation P require that financial institutions provide consumers with certain notices describing their privacy policies.[13] Financial institutions are generally required to provide an initial notice of these policies when a customer relationship is established and to provide an annual notice to customers every year that the customer relationship continues.[14] Except as otherwise authorized in the regulation, if a financial institution chooses to disclose nonpublic personal information about a consumer to a nonaffiliated third party other than as described in its initial notice, the institution is also required to deliver a revised privacy notice.[15] The types of information required to be included in the initial, annual, and revised notices are identical. Each notice must describe whether and how the financial institution shares consumers' nonpublic personal information with other entities.[16] The notices must also briefly describe how financial institutions protect the nonpublic personal information they collect and maintain.[17]

Section 502 of the GLBA and Regulation P also require that initial, annual, and revised notices provide information about the right to opt out of certain financial institution sharing of nonpublic personal information with some types of nonaffiliated third parties. For example, a mortgage customer has the right to opt out of a financial institution disclosing his or her name and address to an unaffiliated home insurance company. On the other hand, a financial institution is not required to allow a consumer to opt out of the institution's disclosure of his or her nonpublic personal information to third party service providers and pursuant to joint marketing arrangements subject to certain requirements; disclosures relating to maintaining and servicing accounts, securitization, law enforcement and compliance, and consumer reporting; and certain other disclosures described in the GLBA and Regulation P as exceptions to the opt-out requirement.[18]

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[2] FAST Act, Public Law 114–94, section 75001.

[3] Public Law 106–102, 113 Stat. 1338 (1999).

[4] 65 FR 35162 (June 1, 2000).

[5] 65 FR 31722 (May 18, 2000) (NCUA final rule); 65 FR 33646 (May 24, 2000) (FTC final rule); 65 FR 40334 (June 29, 2000) (SEC final rule); 66 FR 21236 (Apr. 27, 2001) (CFTC final rule).

[6] 74 FR 62890 (Dec. 1, 2009).

[7] Public Law 111–203, 124 Stat. 1376 (2010).

[8] Public Law 111–203, section 1093. The FTC retained rulewriting authority over any financial institution that is a person described in 12 U.S.C. 5519 (*i.e.*, motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both).

[9] 76 FR 79025 (Dec. 21, 2011).

[10] 15 U.S.C. 6804; 12 CFR 1016.1(b).

[11] 15 U.S.C. 6804(a)(2).

[12] 12 U.S.C. 5512(b)(2)(B).

[13] When a financial institution has a continuing relationship with the consumer, an annual privacy notice is required and the consumer is then referred to as a "customer." 12 CFR 1016.3(i); 1016.3(j)(1).

[14] 12 CFR 1016.4(a)(1); 12 CFR 1016.5(a)(1). Financial institutions are also required to provide initial notices to consumers before disclosing any nonpublic personal information to a nonaffiliated third party outside of certain exceptions. 12 CFR 1016.4(a)(2).

[15] 12 CFR 1016.8.

[16] 12 CFR 1016.6(a)(1)–(5), (9).

[17] 12 CFR 1016.6(a)(8).

In addition to opt-out rights under the GLBA, annual privacy notices also may include information about certain consumer opt-out rights under the Fair Credit Reporting Act (FCRA). The privacy notices under the GLBA/ Regulation P and affiliate disclosures under the FCRA/Regulation V interact in two ways. First, section 603(d)(2)(A)(iii) of the FCRA excludes from that statute's definition of a consumer report[19] the sharing of certain information about a consumer with the institution's affiliates if the consumer is notified of such sharing and is given an opportunity to opt out.[20] Section 503(c)(4) of the GLBA and Regulation P require financial institutions to incorporate into any required Regulation P notices the notification and opt-out disclosures provided pursuant to section 603(d)(2)(A)(iii) of the FCRA, if the institution provides such disclosures.[21]

Second, section 624 of the FCRA and Regulation V's Affiliate Marketing Rule provide that an affiliate of a financial institution that receives certain information (*e.g.*, transaction history)[22] from the institution about a consumer may not use the information to make solicitations for marketing purposes unless the consumer is notified of such use and provided with an opportunity to opt out of that use.[23] Section 624 of the FCRA and Regulation V also permit (but do not require) financial institutions to incorporate any opt-out disclosures provided under section 624 of the FCRA and subpart C of Regulation V into privacy notices provided pursuant to the GLBA and Regulation P.[24]

B. The Alternative Delivery Method for Annual Privacy Notices

In pursuit of the Bureau's goal of reducing unnecessary or unduly burdensome regulations, the Bureau in December 2011 issued a Request for Information (RFI) seeking specific suggestions from the public for streamlining regulations the Bureau had inherited from other Federal agencies. In that RFI, the Bureau specifically identified the annual privacy notice as a potential opportunity for streamlining and solicited comment on possible alternatives to delivering the annual privacy notice.[25] Numerous industry commenters responded to the RFI by advocating for the elimination or limitation of the annual notice requirement.

Financial institutions historically have provided annual notices generally by U.S. postal mail.[26] In 2014, the Bureau adopted a rule to allow financial institutions to use an alternative delivery method to provide annual privacy notices through posting the notices on their Web sites if they meet certain conditions.[27] Specifically, financial institutions can use the alternative delivery method for annual notices if: (1) No opt-out rights are triggered by the financial institution's information sharing practices under the GLBA; (2) no FCRA section 603 opt-out notices are required to appear on the annual notice and any opt-outs required by FCRA section 624 had previously been provided, if applicable, or the annual notice is not the only notice provided to satisfy those requirements; (3) the information included in the annual notice has not changed since the customer received the previous notice; and (4) the financial institution uses the model form provided in Regulation P as its annual notice.

In addition, to assist customers with limited or no access to the internet, an institution using the alternative delivery method is required to mail annual notices to customers who request them by telephone. To make customers aware that its annual privacy notice is available through the Web site or by phone, the institution is required to include a clear and conspicuous statement of availability at least once per year on an account statement, coupon book, or a notice or disclosure the institution issues under any provision of law.

C. Statutory Amendment

On December 4, 2015, Congress amended the GLBA as part of the FAST Act. This amendment, titled Eliminate Privacy Notice Confusion,[28] added new GLBA section 503(f), which provides an exception under which financial institutions that meet two conditions are not required to provide annual notices to customers.[29] New GLBA section 503(f)(1) states the first condition for the annual notice exception: That a financial institution must provide nonpublic personal information only in accordance with certain exceptions in GLBA; providing nonpublic personal information under these exceptions does not trigger consumer opt-out rights.[30] New GLBA section 503(f)(2) states the second condition for the annual notice exception: That a financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with GLBA section 503. The statutory amendment became effective upon enactment in December 2015. This proposed rule would implement the statutory amendment.

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[18] 15 U.S.C. 6802(b)(2), (e); 12 CFR 1016.13, 1016.14, 1016.15.

[19] The FCRA defines "consumer report" generally as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for: (A) Credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 1681b of this title." 15 U.S.C. 1681a(d).

[20] 15 U.S.C. 1681a(d)(2)(A)(iii).

[21] 15 U.S.C. 6803(c)(4); 12 CFR 1016.6(a)(7).

[22] The type of information to which section 624 applies is information that would be a consumer report, but for the exclusions provided by section 603(d)(2)(A)(i), (ii), or (iii) of the FCRA (*i.e.*, a report solely containing information about transactions or experiences between the consumer and the institution making the report, communication of that information among persons related by common ownership or affiliated by corporate control, or communication of other information as discussed above).

[23] 15 U.S.C. 1681s–3 and 12 CFR pt. 1022, subpart C.

[24] 15 U.S.C. 1681s–3(b); 12 CFR 1022.23(b).

[25] 76 FR 75825, 75828 (Dec. 5, 2011).

[26] Regulation P, however, does allow financial institutions to provide notices electronically (*e.g.*, by email) with consent. 12 CFR 1016.9(a) (stating that a financial institution may deliver the notice electronically if the consumer agrees). The Bureau believes that most consumers do not receive privacy notices electronically.

[27] 79 FR 64057 (revising 12 CFR 1016.9(c)). The Bureau's alternative delivery method became effective on October 28, 2014. *Id.*

[28] FAST Act, Public Law 114–94, section 75001.

[29] The Bureau notes that a financial institution that qualifies for the annual notice exception could provide a privacy notice to a customer without jeopardizing the availability of the exception, such as in response to a customer specifically requesting a copy of the notice.

[30] These provisions are GLBA section 502(b)(2) or (e) and are incorporated into existing Regulation P at § 1016.13, § 1016.14, and § 1016.15. They provide exceptions from the requirement that a financial institution provide notice and an opportunity to opt out of sharing nonpublic personal information with a nonaffiliated third party.

D. Effective Date

As discussed above, the statutory exception to the annual notice requirement is already effective. The Bureau contemplates that these proposed amendments to Regulation P would be effective 30 days after any final rule is published in the **Federal Register**.

E. Privacy Considerations

In developing this proposed rule, the Bureau considered its potential impact on consumer privacy. The proposed rule would not affect the collection or use of consumers' nonpublic personal information by financial institutions. The proposal implements a new statutory exception to limit the circumstances under which financial institutions subject to Regulation P will be required to deliver annual privacy notices to their customers. Delivery of annual privacy notices is required under the proposal if financial institutions make certain types of changes to their privacy policies or if their annual notices afford customers the right to opt out of financial institutions' sharing of customers' nonpublic personal information under the GLBA. The statutory exception does not affect the requirement to deliver an initial privacy notice, and all consumers will continue to receive such notices describing the privacy policies of any financial institutions with which they do business to the extent currently required.

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under section 504 of the GLBA, as amended by section 1093 of the Dodd-Frank Act.[31] The Bureau is also issuing this rule pursuant to its authority under sections 1022 and 1061 of the Dodd-Frank Act.[32] The Bureau seeks comment on all aspects of the proposal.

IV. Section-by-Section Analysis

Section 1016.3 Definitions

3(s)(1)

In addition to proposed changes below to implement the amendment to GLBA section 503, the Bureau proposes a technical amendment to a definition in Regulation P. Regulation P's substantive requirements, including the requirement to deliver privacy notices, are generally imposed upon entities that meet the definition of "You" in § 1016.3(s)(1). That provision defines "You" as a "financial institution or other person for which the Bureau has rulemaking authority under section 504(a)(1)(A) of the GLBA." The Bureau has rulemaking authority over entities other than financial institutions pursuant to GLBA section 504(a)(1)(A).[33] The statute's privacy notice requirements, however, specifically only apply to financial institutions.[34] The Bureau therefore believes that the definition of "You" in § 1016.3(s)(1) should be limited to financial institutions.

To ensure consistency between Regulation P and the GLBA, the Bureau proposes a technical amendment to § 1016.3(s)(1) to remove "or other persons." With this change, the definition of "You" is limited to financial institutions. The Bureau does not believe this technical amendment to § 1016.3(s)(1) will change the settled understanding of the scope of Regulation P's privacy notice requirements. Instead, the Bureau believes it will clarify that the scope of Regulation P's privacy notice requirements is consistent with the understanding of stakeholders. The Bureau invites comment on this proposed technical amendment.

Section 1016.5 Annual Privacy Notice to Customers Required

5(a) General Rule

The proposed rule would amend the general requirement in § 1016.5(a)(1) that financial institutions provide annual notices, to clarify that the Bureau has added an exception to this requirement in § 1016.5(e) to incorporate the amendment to GLBA section 503.

5(e) Exception to Annual Notice Requirement

The Bureau proposes to add new § 1016.5(e) to incorporate into Regulation P the exception created by new section 503(f) of the GLBA. Under proposed § 1016.5(e), as in section 503(f), a financial institution would be exempt from providing an annual notice if it meets the two conditions described below.

5(e)(1) When Exception Available

5(e)(1)(i)

New GLBA section 503(f)(1) states the first condition for the annual privacy notice exception: That a financial institution provide nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 of the GLBA; these provisions describe disclosures concerning sharing with nonaffiliated third parties that do not trigger consumer opt-out rights. Proposed § 1016.5(e)(1)(i) would incorporate this condition by requiring that to qualify for the annual notice exception, any nonpublic personal information that financial institutions provide to nonaffiliated third parties must be provided only in accordance with § 1016.13, § 1016.14 or § 1016.15 of Regulation P; these regulatory sections implement subsections (b)(2) and (e) of section 502.[35] A financial institution sharing information pursuant to these exceptions is not required to provide customers with a right to opt out of that sharing.

The Bureau notes that § 1016.6(a)(7) requires that annual privacy notices incorporate opt-out disclosures provided under FCRA section 603(d)(2)(A)(iii). Further, the notices may incorporate opt-out disclosures provided under FCRA section 624.[36] GLBA section 503(f)(1) does not mention these FCRA opt-out disclosures. Based on its expertise and experience with respect to consumer financial markets, the Bureau is proposing that the presence or absence of these FCRA disclosures on a financial institution's privacy notice would not affect whether the institution satisfies GLBA section 503(f)(1) and proposed § 1016.5(e)(1)(i). The Bureau notes, however, that financial institutions that choose to take advantage of the annual notice exception must still provide any opt-out disclosures required under FCRA sections 603(d)(2)(A)(iii) and 624, if applicable. Under the FCRA, neither of these opt-outs is required to be provided annually.[37] Accordingly, institutions can provide these disclosures through other methods, for example, through their initial privacy notices in most circumstances.

5(e)(1)(ii)

New GLBA section 503(f)(2) states the second condition for the annual notice exception: that a financial institution not have changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent notice sent to consumers in accordance with GLBA section 503. Proposed § 1016.5(e)(1)(ii) would incorporate this provision by requiring that, to qualify for the annual notice exception, a financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 1016.6(a)(2) through (5) and (9) in the most recent privacy notice the financial institution provided.

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[31] 15 U.S.C. 6804.

[32] 12 U.S.C. 5512, 5581.

[33] Such rulemaking authority has been exercised with respect to nonaffiliated third parties to which a financial institution discloses nonpublic personal information and that third party's affiliates for purposes of GLBA section 502(c)'s limits on reuse of information. *See* 12 CFR 1016.11(c)–(d).

[34] *See* GLBA sections 502(a)–(b) and 503(a).

[35] The sharing described in these provisions includes, among other things, sharing involving third party service providers, joint marketing arrangements, maintaining and servicing accounts, securitization, law enforcement and compliance, and reporting to consumer reporting agencies.

[36] 15 U.S.C. 1681s–3(b); 12 CFR 1022.23(b).

[37] *See* 15 U.S.C. 1681a(d)(2)(A)(iii); 12 CFR 1022.21, 1022.27; 72 FR 62910, 62930 (Nov. 7, 2007).

Paragraphs (1) through (9) of § 1016.6(a) list the specific information that must be included in privacy notices. Section 1016.6(a)(2) through (5) and (9) require a financial institution to include information related to its policies and practices with regard to disclosing nonpublic personal information, but § 1016.6(a)(1) (information collection) and § 1016.6(a)(8) (confidentiality and security) do not.[38] Based on its expertise and experience with respect to consumer financial markets, the Bureau proposes that only changes to an institution's policies and practices that would require changes to any of the disclosures required by § 1016.6(a)(2) through (5) and (9) would cause a financial institution to be unable to use the exception in proposed § 1016.5(e)(1)(ii).[39]

Section 1016.6(a)(7) requires that any disclosures an institution makes under FCRA section 603(d)(2)(A)(iii), which describe sharing with an institution's affiliates, be included on the privacy notice. The statute does not clearly state whether a financial institution that changes its policies and practices with regard to disclosing nonpublic personal information *to affiliates* satisfies the requirement in GLBA section 503(f)(2). The Bureau believes that the statute could be interpreted such that a financial institution that changes its disclosure required under § 1016.6(a)(7) would not satisfy GLBA section 503(f)(2). The Bureau seeks comment on whether proposed § 1016.5(e)(1)(ii) should include changes to disclosures required by § 1016.6(a)(7) and on how frequently institutions change that disclosure. The Bureau further seeks comment on whether institutions would prefer to inform customers of these changes through sending an annual privacy notice or through sending a disclosure describing only the FCRA section 603(d)(2)(A)(iii) opt-outs and seeks comment on the impact on consumers of these two methods.

The Bureau notes that a financial institution would satisfy proposed § 1016.5(e)(1)(ii) if it changes its disclosures describing policies and practices with regard to disclosing nonpublic personal information that are included in the institution's privacy notice without being required by GLBA or § 1016.6 (*e.g.,* disclosures describing sharing with affiliates under FCRA section 624 or voluntary disclosures and opt-outs). The Bureau seeks comment on whether changes to disclosures that are not required to be included in privacy notices by the GLBA or § 1016.6 should cause an institution not to satisfy proposed § 1016.5(e)(1)(ii).

5(e)(2) Delivery of Annual Privacy Notice After Financial Institution No Longer Meets Requirements for Exception

New GLBA section 503(f) states that a financial institution that meets the requirements for the annual notice exception will not be required to provide annual notices "until such time" as that financial institution fails to comply with the criteria described in section 503(f)(1) and 503(f)(2), which would be implemented in proposed § 1016.5(e)(1)(i) and (ii). A financial institution may no longer meet the requirements for the exception either by beginning to share nonpublic personal information in ways that trigger rights to opt-out notices under GLBA and Regulation P, or by otherwise changing its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent privacy notice the financial institution provided.

Financial institutions that no longer meet the conditions for the exception must provide customers with annual privacy notices. The GLBA, including new GLBA section 503(f), does not clearly specify when institutions must provide these notices. The statute could be read to require the financial institution to actually provide an annual privacy notice by the time it changes its policies or practices such that it no longer qualifies for the exception. Alternatively, it could be read to subject the financial institution, at the time it changes its policies or practices such that it no longer qualifies for the exception, to the requirement to provide an annual privacy notice while being silent as to the timing for actually providing an annual privacy notice. Pursuant to its authority in GLBA section 504 to issue rules to implement the GLBA and based on its expertise and experience with respect to consumer financial markets, the Bureau proposes to adopt this second reading and issue standards for when institutions must provide these notices. Specifically, the Bureau is using its rulemaking authority under GLBA section 504(a) to propose in § 1016.5(e)(2) timing requirements for providing an annual notice in these circumstances. The Bureau is proposing to establish these requirements to ensure that delivery of the annual privacy notice in these circumstances is consistent with the existing timing requirements for privacy notices in the regulation, where applicable, and to provide clarity to financial institutions regarding these requirements.

In developing the proposed framework, the Bureau has looked to existing requirements under the statute and regulation because they already address circumstances in which a financial institution might change its policies and procedures in a way that affects the content of the notices. Specifically, § 1016.8 requires that the financial institution provide a revised notice to consumers *before* implementing certain types of changes; in other cases, the statute and regulation currently contemplate that a change in policy and procedure that affects the content of the notices would simply be reflected on the next regular annual notice provided to the customer. The Bureau is therefore proposing different timing requirements for the resumption of annual notices, depending on whether the change at issue would trigger the requirement for a revised notice under § 1016.8 prior to the change taking effect.

Accordingly, the timing requirements in proposed § 1016.5(e)(2) would differ depending on whether the change that causes the financial institution to no longer satisfy the conditions for the annual notice exception also triggers a requirement under existing Regulation P to deliver a revised notice. Section 1016.8 currently requires that financial institutions provide revised notices to consumers before the institutions share nonpublic personal information with a nonaffiliated third party if their sharing would be different from what the institution described in the initial notice it delivered. After delivering the revised notice, the financial institution must also give the consumer a reasonable opportunity to opt out of any new information sharing beyond the Regulation P exceptions before the new sharing occurs.

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[38] The information specified in § 1016.6(a)(6) describes the consumer's right pursuant to Regulation P to opt out of an institution's disclosure of information and would be inapplicable where a financial institution qualifies for the annual notice exception.

[39] To use the Bureau's alternative delivery method, the information a financial institution is required to convey on its annual privacy notice pursuant to § 1016.6(a)(1) through (5), (8), and (9) must not have changed from the information disclosed in the most recent privacy notice provided to the consumer. 12 CFR 1016.9(c)(2)(D). Thus, changes to the information a financial institution is required to convey pursuant to § 1016.6(a)(1) and (8) would prevent a financial institution from using the alternative delivery method but such changes would not prevent a financial institution from satisfying proposed § 1016.5(e)(1)(ii) for the annual notice exception. Because institutions that include information on their privacy notice pursuant to § 1016.6(a)(7) (which relates to opt-out notices provided pursuant to the FCRA) are not permitted to use the alternative delivery method in any case, § 1016.6(a)(7) is not listed as a type of information that if changed would prevent a financial institution from using the alternative delivery method.

5(e)(2)(i) Changes Preceded by a Revised Privacy Notice

For changes to a financial institution's policies or practices that cause it to no longer satisfy the conditions for the exception and also trigger an obligation to send a revised notice prior to the change, the Bureau proposes in § 1016.5(e)(2)(i) that financial institutions would be required to resume delivery of their subsequent regular annual notices pursuant to the existing timing requirements that govern delivery of annual notices generally. Because the revised notice informs the customer of the institution's changed policies and practices before any new sharing occurs, the Bureau believes that there is no clear urgency regarding delivery of the first annual notice subsequent to implementation of the new policies and procedures.

Specifically, § 1016.4(a)(1) generally requires a financial institution to provide an initial notice to an individual who becomes the institution's customer no later than when it establishes a customer relationship. Section 1016.5(a) requires a financial institution to provide a privacy notice to its customers ''not less than annually'' during the continuation of any customer relationship. Section 1016.5(a)(1) defines annually to mean ''at least once in any period of 12 consecutive months.'' It further provides that a financial institution ''may define the 12-consecutive-month period, but [] must apply it to the customer on a consistent basis.'' Section 1016.5(a)(2) provides an example of the meaning of ''annually'' in relation to the delivery of the first annual notice after the initial notice:

> You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

The example in § 1016.5(a)(2) provides financial institutions with the flexibility to select a specific date during the year to provide annual notices to all customers, regardless of when a particular customer relationship began. This flexibility avoids burdening institutions with either having to provide annual notices on the anniversary of initial notices, or alternatively providing two notices in the first year of the customer relationship to get all accounts originated in a given calendar year on the same cycle for delivering subsequent annual notices.

The Bureau proposes that the approach to timing of the annual notice in § 1016.5(a)(2) be applied if a financial institution makes a change that causes it to lose the exception and triggers the requirement to deliver a revised notice prior to the change. Under the proposed approach, if a financial institution provides a revised notice on any day of year 1 in advance of changing its policies or practices such that it loses the exception, that revised notice would be treated as analogous to an initial notice in § 1016.5(a)(2). Assuming that the financial institution defines the 12-month period as the calendar year, the financial institution would have to provide the first annual notice after losing the exception by December 31 of year 2.

The Bureau proposes to use the same approach in proposed § 1016.5(e)(2)(i) as in existing § 1016.5(a)(2) for two reasons. First, customers would have received a revised notice informing them of the change in the financial institution's policies or practices before the change occurred, and thus customers would not be harmed by allowing the financial institution a longer period of time in which to deliver the first annual notice after the annual notice exception has been lost. Second, this approach would preserve flexibility for financial institutions and avoid requiring them to deliver a revised notice and an annual notice in the same year in order to choose a convenient delivery date for annual notices for all customers. The Bureau believes this flexibility is justified because a financial institution that is required to deliver a revised privacy notice pursuant to § 1016.8 may have continuing annual notice obligations after the exception is lost. This is the case because such an institution could be sharing other than as described in the Regulation P exceptions and thus fail to satisfy proposed § 1016.5(e)(1)(i), making the annual notice exception unavailable in future years.

The Bureau requests comment on the timing for delivery of annual notices proposed in § 1016.5(e)(2)(i) generally and specifically on whether another timing method or a stated period of time would be more appropriate, and if so, what that period of time should be.

5(e)(2)(ii) Changes Not Preceded by a Revised Privacy Notice

Proposed § 1016.5(e)(2)(ii) would specify a deadline for delivering the annual notice for financial institutions that change their policies and practices in such a way as to lose the exception, but do not share information in a way that triggers the requirement under § 1016.8 to deliver a revised notice prior to the change. For these changes, the proposal would require a financial institution to deliver the annual notice within 60 days after the change that caused the institution to lose the exception. The Bureau proposes this 60-day period for providing the annual notice in this situation because customers would not receive a revised notice from the financial institution prior to the institution's change in policies or practices. The Bureau believes that delivery of the annual privacy notice within a relatively short time is necessary and appropriate to inform customers of the change.

In addition, the Bureau believes that this deadline would not impose undue or unreasonable costs on financial institutions, particularly since the delivery requirement is effectively a one-time burden absent additional changes to their policies and practices. Specifically, after providing the one annual notice, the financial institution would once again meet both of the conditions for the exception—it would not be sharing other than as described in a Regulation P exception and its policies and practices would not have changed since it provided the annual notice. Because the financial institution would once again meet the conditions for the exception, it would not be required to provide future annual notices. In other words, these financial institutions would likely lose the exception for only a single year. Given that financial institutions in this situation would have no continuing obligation at all to send annual notices, they would not need flexibility in choosing a convenient delivery date for future annual notices.[40]

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[40] If the financial institution were to make changes in the future to its practices and policies,

The Bureau also notes that financial institutions have substantial flexibility in managing the burden involved in sending the one annual notice because institutions can choose when they change their policies or practices. Accordingly, an institution could choose when to make the change triggering the commencement of the 60-day period for delivery of the annual notice, so that the date of delivery can be as convenient and low-cost as possible. The Bureau requests comment on whether 60 days is an appropriate period for delivering annual notices in these circumstances or if another period would be more appropriate.

5(e)(2)(iii) Example

Proposed § 1016.5(e)(2)(iii) would provide an example for when an institution must provide an annual notice after changing its policies or practices such that it no longer meets the requirements for the annual notice exception set forth in proposed § 1016.5(e)(1). The Bureau proposes this example to facilitate compliance with proposed § 1016.5(e)(2). The proposed example would assume that an institution changes its policies or practices effective April 1 of year 1 and defines the 12-consecutive-month period pursuant to existing § 1016.5(a)(1) as a calendar year. Proposed § 1016.5(e)(2)(iii) states that the institution must provide an annual notice by December 31 of year 2 if the institution were required to provide a revised notice prior to the change and provided that revised notice on March 1 of year 1 in advance of the change. Proposed § 1016.5(e)(2)(iii) further states that the institution must provide an annual notice by May 30 of year 1 if the institution were not required to provide a revised notice prior to the change. The Bureau invites comment on proposed § 1016.5(e)(2)(iii) generally and specifically on whether it would facilitate compliance with proposed § 1016.5(e)(2).

Section 1016.9 Delivering Privacy and Opt Out Notices

9(c)(2) Alternative Delivery Method for Providing Certain Annual Notices

As discussed in Part II, the Bureau amended Regulation P in October 2014 to allow financial institutions that meet certain criteria to deliver annual notices pursuant to the "alternative delivery method." The Bureau adopted the alternative delivery method to reduce information overload for consumers receiving duplicative mailed annual privacy notices and to reduce the cost to financial institutions from delivering them. Financial institutions that meet the conditions in Regulation P to use the alternative delivery method also would meet the conditions for the statutory exception in section 503(f). Financial institutions that use the alternative delivery method to decrease their cost of delivering annual notices may now entirely eliminate the cost by not sending the notices at all. Because the alternative delivery method is no longer necessary to decrease burden in light of the new statutory exception in section 503(f), the Bureau proposes to remove the alternative delivery method from Regulation P.

Specifically, any financial institution that meets the conditions to use the alternative delivery method will also meet the conditions to be excepted from delivering an annual privacy notice pursuant to new GLBA section 503(f) because the two conditions that must be met for section 503(f) to apply are closely related to conditions for using the alternative delivery method. First, new GLBA section 503(f)(1) is substantively identical to the first requirement for using the alternative delivery method:[41] that the financial institution share nonpublic personal information about customers with nonaffiliated third parties only in ways that do not give rise to the customer's right to opt out of that sharing.[42] Second, new GLBA section 503(f)(2) is similar to the fourth requirement for using the alternative delivery method: that the institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that were disclosed to the customer in the most recent privacy notice.[43] Accordingly, any financial institution that meets the requirement in § 1016.9(c)(2)(i)(D) would also meet the requirement of section 503(f)(2).

The Bureau believes that a financial institution that had both options available to it would choose not to send the annual privacy notice at all, rather than to deliver it pursuant to the alternative delivery method, so that it can eliminate rather than merely reduce the cost of providing annual notices. Given that any financial institution that qualifies to use the alternative delivery method for its annual notices also meets the qualifications for the new annual notice exception, the Bureau believes that including the alternative delivery method in Regulation P is no longer useful.

The Bureau notes that financial institutions that delivered annual notices using the alternative delivery method while it was in effect have complied with Regulation P, notwithstanding that the alternative delivery method provisions may ultimately be removed from the regulation, as proposed. The Bureau further notes that financial institutions that qualify for the new exception may still choose to post privacy notices on their Web sites or deliver privacy notices to consumers who request them. Such activities would not affect a financial institution's eligibility for the new 503(f) exception.

Accordingly, the Bureau proposes to remove § 1016.9(c)(2) and to renumber existing § 1016.9(c)(1) as § 1016.9(c). The Bureau invites comment on its proposal to remove the alternative delivery method.

V. Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[44] The Bureau requests comment on the preliminary analysis presented below as well as the submission of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the rule. The Bureau has consulted and coordinated with the SEC, CFTC, FTC, and NAIC, and consulted with or offered to consult with the OCC, Federal Reserve Board, FDIC, NCUA, and HUD, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The proposal would implement the December 2015 amendment to the GLBA and amend § 1016.5 of Regulation

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these changes could trigger a new obligation to provide annual privacy notices.

[41] 12 CFR 1016.9(c)(2)(i)(A).

[42] This sharing is pursuant to GLBA section 503(b)(2) and (e), which correspond to Regulation P § 1016.13, § 1016.14, and § 1016.15.

[43] 12 CFR 1016.9(c)(2)(i)(D). The requirement in § 1016.9(c)(2)(i)(D) is somewhat more restrictive because it requires a financial institution not to have changed its practices with respect to disclosing nonpublic personal information and protecting the confidentiality and security of nonpublic personal information whereas section 503(f)(2) requires that the institution not have changed its policies only with respect to disclosing nonpublic personal information. See the section-by-section analysis of proposed § 1016.5(e)(1)(ii) for further discussion.

[44] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

P to provide that a financial institution is not required to deliver an annual privacy notice if it:

(1) Provides nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of § 1016.13, § 1016.14, or § 1016.15; and

(2) Has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 1016.6(a)(2) through (5) and (9) in the most recent privacy notice provided.

In considering the potential benefits, costs, and impacts of the proposal, the Bureau takes as the baseline for the analysis the regulatory regime that currently exists.[45] This includes the current provisions of Regulation P. The Bureau assumes that all financial institutions that can use the alternative delivery method provided in § 1016.9(c)(2) are doing so.

B. Potential Benefits and Costs to Consumers and Covered Persons

The impact on consumers of proposed § 1016.5(e) depends on whether the particular consumer prefers or would otherwise benefit from receiving an annual privacy notice that does not offer the consumer an opt-out under the GLBA and is largely unchanged from previous notices.[46] Under the proposal, financial institutions that meet the requirements for the annual notice exception would not be required to provide consumers with annual privacy notices, and the Bureau anticipates that many institutions would decide not to provide notices in these circumstances. While there is no data available on the number of consumers who are indifferent to (or dislike) receiving unchanged privacy notices every year, the limited use of opt-outs and anecdotal evidence suggest that there are such consumers.[47] For this group of consumers, proposed § 1016.5(e) would provide a benefit because it would be available to some institutions that cannot use the alternative delivery method, so that more consumers would stop receiving mailed annual privacy notices.

For other consumers who would prefer or otherwise benefit from receiving the annual notices, there would be some cost because some institutions that previously delivered notices—whether through the standard delivery methods or through the alternative delivery method that includes posting on the institution's Web site—would no longer deliver annual notices. Consumers may be less informed about opportunities to limit a financial institution's information sharing practices if the financial institution meets the requirements for the annual notice exception and chooses not to provide annual notices. For example, some consumers will receive fewer notices in which a financial institution offers *voluntary* opt-outs, *i.e.,* opt-outs that the financial institution is not required by Regulation P to offer (because, for example, the type of sharing the financial institution does is covered by an exception) but that the institution decides to provide anyway via the annual privacy notice. Voluntary opt-outs do not appear to be common, however.[48] Further, institutions could continue to offer voluntary opt-outs and could offer them through other mechanisms even if they do not provide annual privacy notices.

If financial institutions choose not to provide notices pursuant to the annual notice exception, consumers also may be less informed of their opt-out rights under the FCRA. Section 503(c)(4) of the GLBA and Regulation P require financial institutions providing initial and annual privacy notices to incorporate into them any notification and opt-out disclosures provided pursuant to section 603(d)(2)(A)(iii) of the FCRA.[49] Section 624 of the FCRA and Regulation V also permit (but do not require) financial institutions providing initial and annual privacy notices under Regulation P to incorporate any opt-out disclosures provided under section 624 of the FCRA and subpart C of Regulation V into those notices.[50] Because financial institutions may decide not to provide annual notices pursuant to the exception in proposed § 1016.5(e), consumers may be less informed of their opt-out rights pursuant to these sections of the FCRA to the extent that institutions use less effective methods to convey information about these rights to consumers.[51] Consumers also may be less informed about a financial institution's data collection practices and its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Regarding benefits and costs to covered persons, the primary effect of the proposal would be burden reduction by lowering the costs to industry of providing annual privacy notices. Proposed § 1016.5(e) would impose no new compliance requirements on any financial institution. Any institution that could use the alternative delivery method will meet the requirements for the annual notice exception pursuant to § 1016.5(e).[52] A financial institution that is in compliance with current law would be required to take any different or additional action only to the extent it chose to take advantage of the annual notice exception and thus was required to separately meet its opt-out obligations, if any, pursuant to the FCRA.[53]

The expected cost savings to financial institutions from the proposed revisions to § 1016.5(e) depend on whether the financial institution uses the alternative delivery method under the baseline. Financial institutions that currently use the alternative delivery method may cease complying with the requirements in current § 1016.9(c)(2) since they necessarily comply with the proposed exception to the annual notice requirement and thus would no longer be required to deliver an annual notice.[54] The Bureau expects that financial institutions changing from using the alternative delivery method to provide annual notices to not providing these notices at all would yield little savings in costs to the institutions.[55] Financial institutions that currently do not use the alternative delivery method would be expected to use the proposed annual notice exception if the expected costs of any changes required to use the exception and the costs of any consequences of not providing the annual disclosure would be lower than the costs of complying with current Regulation P. The Bureau believes that few such financial institutions would find it in their interests to change their information sharing practices in order to use the annual notice exception. Thus, the Bureau takes the information sharing practices of financial institutions as given and considers how many financial institutions that do not currently meet the requirements to use the alternative delivery method could use the proposed annual notice exception.[56] As a practical matter, the Bureau identifies these institutions solely by their information sharing practices: That is to say, the Bureau identifies the financial institutions whose current information sharing practices do not meet the standards in § 1016.9(c)(2) but would meet the standards in proposed § 1016.5(e).[57] The Bureau then estimates the ongoing savings in costs to these financial institutions from no longer sending the annual privacy notice.

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[45] The Bureau has discretion in each rulemaking to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

[46] As discussed in part IV in the section-by-section analysis of proposed § 1016.5(e)(1)(ii), certain changes to an institution's policies or practices would not cause the institution to lose the annual notice exception.

[47] One early analysis of the use of the opt-outs reported at most 5% of consumers make use of them in any year, and likely fewer. *See* Jeffrey M. Lacker, *The Economics of Financial Privacy: To Opt Out or Opt In?,* 88/3 Fed. Res. Bank Rich. Econ. Q., at 11 (Summer 2002), *available at https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_quarterly/2002/summer/pdf/lacker.pdf.*

[48] *See* Lorrie Faith Cranor et al., *Are They Actually Any Different? Comparing Thousands of Financial Institutions' Privacy Practices, available at http://www.econinfosec.org/archive/weis2013/papers/CranorWEIS2013.pdf* (submitted as part of The Twelfth Workshop on the Economics of Information Security (WEIS 2013), June 11–12, 2013, Georgetown University, Washington, DC). Their findings (Table 2) imply that at most 15% of the 3,422 FDIC insured depositories that post the model privacy form on their Web sites offer at least one voluntary opt-out. Data from a much larger group of financial institutions analyzed by Cranor et al. (undated) imply (Table 2) that at most 27% of the 6,191 financial institutions that post the model privacy form on their Web sites offer at least one voluntary opt-out.

[49] 15 U.S.C. 6803(c)(4); 12 CFR 1016.6(a)(7).

[50] 15 U.S.C. 1681s–3(b); 12 CFR 1022.23(b).

[51] As explained in the section-by-section analysis to proposed § 1016.5(e)(1)(i) in part IV, the annual notice exception in proposed § 1016.5(e) does not relieve financial institutions of the obligation to provide consumers with the information that is required under FCRA sections 603(d)(2)(A)(iii) or 624.

[52] Any financial institution that meets the conditions to use the alternative delivery method will also meet the conditions to be excepted from delivering an annual privacy notice pursuant to new GLBA section 503(f) because the two conditions for section 503(f) are closely related to conditions for using the alternative delivery method. See the section-by-section analysis of § 1016.9(c) for further explanation.

[53] See the section-by-section analysis to proposed § 1016.5(e)(1)(i) in part IV for an explanation of the interaction between the annual notice exception and the opt-outs provided under FCRA sections 603(d)(2)(A)(iii) and 624.

For the 2014 Annual Privacy Notice Rule, the Bureau collected a sample of privacy policies from banks and credit unions and estimated both the number of financial institutions that would adopt the alternative delivery method and the aggregate cost savings that would result.[58] Specifically, the Bureau examined the privacy policies of 19 banks with assets over $100 billion as well as the privacy policies of 106 additional banks selected through random sampling. The Bureau previously concluded that 80% of banks could use the alternative delivery method set forth in § 1016.9(c)(2). For the current rulemaking, the Bureau re-analyzed this sample to identify banks with information sharing practices that do not meet the standard in § 1016.9(c)(2) but would meet the standard in proposed § 1016.5(e). In the re-analysis, the Bureau finds that 48% of banks that could not use the alternative delivery method could use the proposed exception to the annual notice requirement. Most of these banks were not able to use the alternative delivery method because they offered opt-outs to consumers pursuant to FCRA section 603(d)(2)(A)(iii); a financial institution can meet the requirements for the annual notice exception in proposed § 1016.5(e) even if offers such opt-outs. Specifically, the Bureau previously estimated that approximately 1,350 banks could not use the alternative delivery method and our re-analysis shows that 650 of these banks (48%) would be able to use the annual notice exception.[59] For banks with assets over $10 billion, 70% of those that could not use the alternative delivery method could use the annual notice exception. For banks with assets of $10 billion or less and banks with assets of $500 million or less, the respective figures are 47% and 40%.

The Bureau also previously examined the privacy policies of the four credit unions with assets over $10 billion as well as the privacy policies of 50 additional credit unions selected through random sampling. The Bureau previously concluded that 46% of credit unions could use the alternative delivery method. The information evaluated in the re-analysis shows that none of the credit unions that could not use the alternative delivery method could use the exception to the annual notice requirement. Credit unions that clearly could not use the alternative delivery method generally shared information with nonaffiliated third parties other than as specified in the exceptions in § 1016.13, § 1016.14, and § 1016.15. However, there are a number of cases in which the Bureau could not readily evaluate the information sharing practices of the sampled credit union because it did not have a Web site, did not post the privacy notice on its Web site, or did not use the model form.[60] The Bureau requests data and other factual information on the use of the alternative delivery method by credit unions and the likely use of the proposed annual notice exception by credit unions that cannot use the alternative delivery method.

Regarding the number of non-depository financial institutions that would benefit from the proposed exception to the annual notice requirement, the Bureau uses the same basic methodology as in its prior analysis. Specifically, the Bureau assumes that the fraction of non-depository financial institutions that cannot use the alternative delivery method but can use the proposed annual notice exception is the same for non-depository institutions as for banks (9.5%).[61]

Having identified the financial institutions that would benefit from the proposed exception to the annual notice requirement, the Bureau estimates the benefit using the same basic methodology as in its prior analysis.[62] For banks, the Bureau allocated the total burden of providing the annual privacy notices to asset-size groups in proportion to the share of assets in the group. The Bureau then estimated an amount of burden reduction specific to each asset-size group using the results from the privacy notice analysis described above. The total burden reduction is then the sum of the burden reductions in each asset-size group. The estimated reduction in burden for banks using this methodology is approximately $3.158 million annually. The estimated reduction in burden for non-depository financial institutions is an additional $231,000 annually.[63] Thus, the Bureau believes that the total reduction in burden is approximately $3.389 million dollars annually.[64] This represents about 28% of the total $12.162 million annual cost of providing the annual privacy notice under Regulation P. The Bureau requests comment on this preliminary analysis as well as the submission of additional data that could inform the Bureau's consideration of the cost savings to financial institutions.

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[54] *See supra* note 52.

[55] The Bureau believes that the alternative delivery method imposes little ongoing cost to financial institutions that have adopted it. These costs derive from the additional text on an account statement, coupon book, notice or disclosure the institution already provides; maintaining a Web page dedicated to the annual privacy notice; responding to telephone calls from a very small number of consumers requesting that the model form be mailed; and mailing the forms prompted by these calls.

[56] Because the Bureau takes institutions' sharing practices as given and because the cost savings estimate is based on a single year, the expected cost savings for institutions does not account for a reduction or increase in aggregate cost savings that may occur if any institutions change their sharing practices in the future such that they no longer meet the requirements for the annual notice exception or they begin to meet those requirements.

[57] It is possible for a financial institution to be unable to use the alternative delivery method despite having information sharing practices that comply with § 1016.9(c)(2), such as where the institution does not use the model privacy notice and therefore does not satisfy § 1016.9(c)(2)(i)(E). This simplification will tend to understate the benefits of the annual notice exception, since the Bureau generally assumes that these financial institutions are using the alternative delivery method. The one exception is the case where a financial institution does not have a Web site, since in this case it cannot use the alternative delivery method but the Bureau also cannot (as a practical matter) obtain and evaluate its information sharing practices. In this case the Bureau assumes that the financial institution cannot use either the alternative delivery method or the proposed exception.

[58] *See* 79 FR 64057, 64076–64077 (Oct. 28, 2014). Note that the term "banks" as used throughout this proposal includes savings associations.

[59] While these 650 banks are just 9.5% of all banks, this percentage does not take into account the fact that the majority of banks could not potentially benefit from the exception to the annual privacy notice requirement since (by our previous analysis) they already use the alternative delivery method.

[60] One or more of these conditions held for a number of credit unions with assets of $500 million or less. If a financial institution did not have a Web site or did not post the privacy notice on their Web site, the Bureau made the conservative assumption that it did not benefit from the alternative delivery method and would not benefit from the proposed annual notice exception. If a financial institution did not use the model form, however, the Bureau assumed that it would adopt the model form if that was the only barrier to using the alternative delivery method. For further discussion, *see* 79 FR 64057, 64076 (Oct. 28, 2014).

[61] For further discussion, *see id.* at 64077.

[62] *See id.* at 64076–64077.

The proposed exception to the annual notice requirement implements a December 2015 statutory amendment to the GLBA. The Bureau considered alternatives to the timeline for delivery of annual notices when a financial institution that qualified for the annual exception changes its policies or practices such that it no longer qualifies. Because the estimates of costs and benefits to consumers and covered persons take institutions' sharing policies and practices as given, the alternatives with respect to the timeline for delivery of annual notices do not impact those estimates. Further, even if the estimates allowed for changes in sharing policies and practices that could cause institutions to meet or fail to meet the requirements for the annual notice exception, the aggregate annual benefits and costs of delivery would not likely be significantly impacted by the timeline for delivery of annual notices.

C. Impact on Depository Institutions With No More Than $10 Billion in Assets

The Bureau currently estimates that approximately 600 banks with $10 billion or less in assets cannot use the alternative delivery method but could use the annual notice exception. This constitutes 47% of banks with $10 billion or less in assets that do not use the alternative delivery method and 8.8% of all banks with $10 billion or less in assets. As reported above, 70% of banks with more than $10 billion in assets that do not use the alternative delivery method could use the proposed exception to the annual notice requirement. This is 55% of all banks with more than $10 billion in assets. Thus, the proposed rule may have different impacts on federally insured depository institutions with $10 billion or less in assets as described in section 1026 of the Dodd-Frank Act. The Bureau currently believes that no credit unions of any size that could not use the alternative delivery method could use the exception to the annual notice requirement.

D. Impact on Access to Credit and on Consumers in Rural Areas

The Bureau does not believe that the proposed rule would reduce consumers' access to consumer financial products or services or have a unique impact on rural consumers.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act. The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[65] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[66]

An IRFA is not required here because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the proposal to impose costs on small entities. All methods of compliance under current law will remain available to small entities if the proposal is adopted. Thus, a small entity that is in compliance with current law need not take any different or additional action if the proposal is adopted. In addition, based on the data analysis described previously, the Bureau believes that the proposed annual notice exception would allow some small institutions to stop sending the annual notice and to thereby reduce costs. However, there are a number of cases in which the Bureau could not readily evaluate the information sharing practices of small banks and especially small credit unions because the institution did not have a Web site, did not post the privacy notice on its Web site, or did not use the model form. The Bureau seeks comment on this analysis.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[67] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. This proposal would amend Regulation P, 12 CFR part 1016. The collections of information related to Regulation P have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170–0010. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection, unless the information collection displays a valid control number assigned by OMB.

As explained below, the Bureau has determined that this proposed rule does not contain any new or substantively revised information collection requirements other than those previously approved by OMB. The proposal would implement the December 2015 amendment to the GLBA and amend § 1016.5 of Regulation P to provide that a financial institution is not required to deliver an annual privacy notice if it:

(1) Provides nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of § 1016.13, § 1016.14, or § 1016.15 and;

(2) Has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 1016.6(a)(2) through (5) and (9) in the most recent privacy notice provided.

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[63] Note that this figure excludes auto dealers. Auto dealers are regulated by the FTC and would not be directly impacted by this amendment to Regulation P.

[64] Some of these banks and non-depository financial institutions that currently include on their annual privacy notice the opt-out notices pursuant to FCRA section 603(d)(2)(A)(iii) or FCRA section 624 and the Affiliate Marketing Rule may now be required to deliver these notices separately. The Bureau does not have the data necessary to estimate the frequency with which these opt-out notices would be delivered separately or to subtract the cost of delivering them separately against the savings from no longer providing the annual privacy notice.

[65] 5 U.S.C. 603 through 605.

[66] 5 U.S.C. 609.

[67] 44 U.S.C. 3501 through 3558.

Under Regulation P, the Bureau generally accounts for the paperwork burden for the following respondents pursuant to its enforcement/supervisory authority: Federally insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions subject to Regulation P. Accordingly, the Bureau has allocated to itself half of the final rule's estimated reduction in burden on non-depository financial institutions subject to Regulation P. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have enforcement and/or supervision authority. They may use the Bureau's burden estimation methodology, but need not do so.

The Bureau does not believe that this proposed rule would impose any new or substantively revised collections of information as defined by the PRA, and instead believes that it would have the overall effect of reducing the previously approved estimated burden on industry for the information collections associated with the Regulation P annual privacy notice. Using the Bureau's burden estimation methodology, the reduction in the estimated ongoing burden would be approximately 62,197 hours annually for the roughly 13,500 banks and credit unions subject to the proposed rule, including Bureau respondents, and the roughly 29,400 entities regulated by the FTC also subject to the proposed rule (*i.e.*, entities over which the FTC has Regulation P administrative enforcement authority). The reduction in estimated ongoing costs from the reduction in ongoing burden would be approximately $3.389 million annually.[68]

The Bureau believes that the one-time cost of adopting the annual notice exception for financial institutions that would adopt it is *de minimis*. The Bureau's methodology for estimating the reduction in ongoing burden was discussed above. The method is similar to that described in the PRA analysis in the 2014 Annual Privacy Notice Rule. The only difference is that instead of estimating the fraction of institutions that would be able to use the alternative delivery method, the Bureau estimates the fraction of institutions that would be able to use the annual notice exception and are not already using the alternative delivery method, to compute the reduction in burden relative to the baseline.[69]

The Bureau takes all of the reduction in ongoing burden from banks and credit unions with assets $10 billion and above and half the reduction in ongoing burden from the non-depository institutions subject to the FTC enforcement authority that are subject to the Bureau's Regulation P. The total reduction in ongoing burden taken by the Bureau is 53,216 hours or $3.058 million annually.[70]

The Bureau has determined that the proposed rule does not contain any new or substantively revised information collection requirements as defined by the PRA and that the burden estimate for the previously approved information collections should be revised as explained above. The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA. Comments should be submitted as outlined in the **ADDRESSES** section above. All comments will become a matter of public record.

SUMMARY OF BURDEN CHANGES

Information collections	Previously approved total burden hours	Net change in burden hours	New total burden hours
Notices and disclosures	366,134	−53,216	312,917

List of Subjects in 12 CFR Part 1016

Banks, banking, Consumer protection, Credit, Credit unions, Foreign banking, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation P, 12 CFR part 1016, as set forth below:

PART 1016—PRIVACY OF CONSUMER FINANCIAL INFORMATION (REGULATION P)

■ 1. The authority citation for part 1016 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 6804.

■ 2. Section 1016.3 is amended by revising paragraph (s)(1) to read as follows:

§ 1016.3 Definitions.

* * * * *

(s)(1) *You* means a financial institution for which the Bureau has rulemaking authority under section 504(a)(1)(A) of the GLB Act (15 U.S.C. 6804(a)(1)(A)).

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Subpart A—Privacy and Opt Out Notices

■ 3. Section 1016.5 is amended by revising the first sentence of paragraph (a)(1) and adding paragraph (e) to read as follows:

§ 1016.5 Annual privacy notice to customers required.

(a)(1) *General rule.* Except as provided by paragraph (e) of this section, you must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. * * *

* * * * *

(e) *Exception to annual privacy notice requirement*—(1) *When exception available.* You are not required to deliver an annual privacy notice if you:

(i) Provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of § 1016.13, § 1016.14, or § 1016.15; and

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[68] The total hours and costs consist of: (a) 51,230 hours at banks and credit unions evaluated at $61.65/hour; and (b) 10,967 hours at entities regulated by the FTC also subject to the proposed rule evaluated at $21.07/hour.

[69] *See* 79 FR 64057, 64080 (Oct. 28, 2014).

[70] The total hours and costs consist of: (a) 47,733 hours at banks and credit unions evaluated at $61.65/hour; and (b) 5,484 hours at entities regulated by the FTC also subject to the proposed rule evaluated at $21.07/hour.

(ii) Have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 1016.6(a)(2) through (5) and (9) in the most recent privacy notice provided pursuant to this part.

(2) *Delivery of annual privacy notice after financial institution no longer meets requirements for exception.* If you have been excepted from delivering an annual privacy notice pursuant to paragraph (e)(1) of this section and change your policies or practices in such a way that you no longer meet the requirements for that exception, you must comply with paragraph (e)(2)(i) or (e)(2)(ii) of this section, as applicable.

(i) *Changes preceded by a revised privacy notice.* If you no longer meet the requirements of paragraph (e)(1) of this section because you change your policies or practices in such a way that § 1016.8 requires you to provide a revised privacy notice, you must provide an annual privacy notice in accordance with the timing requirements in paragraph (a) of this section, treating the revised privacy notice as an initial privacy notice.

(ii) *Changes not preceded by a revised privacy notice.* If you no longer meet the requirements of paragraph (e)(1) of this section because you change your policies or practices in such a way that § 1016.8 does not require you to provide a revised privacy notice, you must provide an annual privacy notice within 60 days of the change in your policies or practices that causes you to no longer meet the requirements of paragraph (e)(1).

(iii) *Example.* You change your policies and practices in such a way that you no longer meet the requirements of paragraph (e)(1) of this section effective April 1 of year 1. Assuming you define the 12-consecutive-month period pursuant to paragraph (a) of this section as a calendar year, if you were required to provide a revised privacy notice under § 1016.8 and you provided that notice on March 1 of year 1, you must provide an annual privacy notice by December 31 of year 2. If you were not required to provide a revised privacy notice under § 1016.8, you must provide an annual privacy notice by May 30 of year 1.

■ 4. Section 1016.9 is amended by revising paragraph (c) to read as follows:

§ 1016.9 Delivering privacy and opt out notices.

* * * * *

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your Web site to access financial products and services electronically and agrees to receive notices at the Web site, and you post your current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

* * * * *

Dated: June 29, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–16132 Filed 7–8–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3985; Directorate Identifier 2014–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) to supersede Airworthiness Directive (AD) 2010–04–03, for all Airbus Model A310 series airplanes. AD 2010–04–03 currently requires accomplishing repetitive detailed inspections for cracking around the fastener holes in certain wing top skin panels between the front and rear spars on the left- and right-hand sides of the fuselage, and repair if necessary. The NPRM proposed to continue to require the repetitive detailed inspections, and would also require supplemental repetitive ultrasonic inspections for cracking around the fastener holes in wing top skin panels 1 and 2 at rib 2, and repair if necessary. This action revises the NPRM by expanding the inspection area to include rib 3 due to widespread fatigue damage. We are proposing this supplemental NPRM (SNPRM) to detect and correct fatigue cracking around the fastener holes, which could result in reduced structural integrity of the airplane. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by August 25, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3985; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2015–3985; Directorate Identifier 2014–NM–182–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–04–03, Amendment 39–16196 (75 FR 6852, February 12, 2010) ("AD 2010–04–03"). AD 2010–04–03 applied to all Airbus Model A310 series airplanes. The NPRM published in the **Federal Register** on October 13, 2015 (80 FR 61327) ("the NPRM"). The NPRM was prompted by development of an ultrasonic inspection program to allow for earlier crack detection and extend the repetitive inspection intervals. The NPRM proposed to retain the requirements of AD 2010–04–03, and proposed to require supplemental repetitive ultrasonic inspections for cracking around the fastener holes in wing top skin panels 1 and 2 at rib 2, and repair if necessary.

Since we issued the NPRM, a widespread fatigue damage analysis determined that the inspection area should be expanded to include cracking around the fastener holes in wing top skin panels 1 and 2 between the front and rear spar at rib 3.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0005, dated January 7, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on all Airbus Model A310 series airplanes. The MCAI states:

> Following scheduled maintenance, cracks were found around the wing top skin panels fastener holes at Rib 2, between Stringer (STG) 2 and STG14.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane. The General Visual Inspection required by the existing applicable Airworthiness Limitation Items (ALI) tasks may not be adequate to detect these cracks.
>
> To address this issue, Airbus developed an inspection programme based on repetitive detailed inspections (DET) to ensure that any visible cracks in the wing top skin panels 1 and 2 along Rib 2 are detected in time and repaired appropriately. EASA issued [EASA] AD 2008–0211 [*http://ad.easa.europa.eu/ad/2008-0211*, which corresponds to FAA AD 2010–04–03] to require implementation of this inspection programme.
>
> After that [EASA] AD was issued, Airbus improved the inspection programme with an ultrasonic inspection to allow earlier crack detection, to subsequently reduce the scope of potential repair action, and to extend the intervals of the repetitive inspections.
>
> Consequently, EASA issued and AD 2014–0200 (later revised), superseding [EASA] AD 2008–0211, retaining its requirements, and to require supplementary repetitive ultrasonic inspections [for cracking] of the wing top skin panel 1 and 2 between STG2 and STG10 at Rib 2 [and repair if needed].
>
> Since EASA AD 2014–0020R1 was issued, a widespread fatigue damage analysis concluded that the inspection programme has to be extended to include the wing top skin panels at Rib 3 attachments. For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0200R1, which is superseded, and extends the inspection area to include Rib 3.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3985.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A310–57–2096, Revision 03, dated June 30, 2015. This service information describes procedures for detailed and ultrasonic inspections for cracking around the fastener holes of wing top skin panels 1 and 2, at ribs 2 and 3, on the left- and right-hand sides of the fuselage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comment received. The commenter, FedEx, supported the content of the NPRM and is currently complying with the requirements.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this SNPRM affects 28 airplanes of U.S. registry.

We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $19,040, or $680 per product.

We estimate that it would take about 15 work-hours per product to do any necessary on-condition actions that would be required based on the results of the inspections. Required parts would cost about $10,000 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–04–03, Amendment 39–16196 (75 FR 6852, February 12, 2010), and adding the following new AD:

Airbus: Docket No. FAA–2015–3985; Directorate Identifier 2014–NM–182–AD.

(a) Comments Due Date

We must receive comments by August 25, 2016.

(b) Affected ADs

This AD replaces AD 2010–04–03, Amendment 39–16196 (75 FR 6852, February 12, 2010) ("AD 2010–04–03").

(c) Applicability

This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by the development of an ultrasonic inspection program to allow for earlier crack detection and extend the repetitive inspection intervals. We are issuing this AD to detect and correct fatigue cracking around the fastener holes in certain wing top skin panels between the front and rear spars on the left- and right-hand sides of the fuselage, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

Except as required by paragraph (i) of this AD: Within the initial compliance time and thereafter at the repetitive intervals specified in paragraphs (h)(1) through (h)(3) of this AD, as applicable, accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD concurrently and in sequence, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2096, Revision 03, dated June 30, 2015, except as provided by paragraph (j) of this AD.

(1) Accomplish a detailed inspection for cracking around the fastener holes in the wing top skin panels 1 and 2, along ribs 2 and 3, between the front and rear spars on the left- and right-hand sides of the fuselage.

(2) Accomplish an ultrasonic inspection for cracking around the fastener holes in the wing top skin panels 1 and 2, along ribs 2 and 3, between stringer (STG) 2 and STG10 on the left- and right-hand sides of the fuselage.

(h) Compliance Times for Airplanes Not Previously Inspected

(1) For Model A310–203, –204, –221, and –222 airplanes: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD at the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD. Repeat the inspections specified in paragraphs (g)(1) and (g)(2) of this AD thereafter at intervals not to exceed 2,000 flight cycles or 4,100 flight hours, whichever occurs first.

(i) Prior to the accumulation of 18,700 flight cycles or 37,400 flight hours since first flight of the airplane, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(2) For Model A310–304, –322, –324, and –325 airplanes having an average flight time (AFT) of less than 4 hours: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD at the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD. Repeat the inspections specified in paragraphs (g)(1) and (g)(2) of this AD thereafter at intervals not to exceed 2,000 flight cycles or 5,600 flight hours, whichever occurs first.

(i) Prior to the accumulation of 17,300 flight cycles or 48,400 flight hours since first flight of the airplane, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(3) For Model A310–304, –322, –324, and –325 airplanes having an AFT of equal to or more than 4 hours: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD at the later of the times specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD. Repeat the inspections specified in paragraphs (g)(1) and (g)(2) of this AD thereafter at intervals not to exceed 1,500 flight cycles or 7,500 flight hours, whichever occurs first.

(i) Prior to the accumulation of 12,800 flight cycles or 64,300 flight hours since first flight of the airplane, whichever occurs first.

(ii) Within 30 days after the effective date of this AD.

(i) Compliance Times for Airplanes Previously Inspected

For airplanes previously inspected before the effective date of this AD using Airbus Service Bulletin A310–57–2096, dated May 6, 2008; Airbus Service Bulletin A310–57–2096, Revision 01, dated August 5, 2010; or Airbus Service Bulletin A310–57–2096, Revision 02, dated March 5, 2014: At the applicable compliance times specified in paragraphs (i)(1), (i)(2), and(i)(3) of this AD, accomplish the actions specified in paragraphs (g)(1) and (g)(2) concurrently and in sequence, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2096, Revision 03, dated June 30, 2015. Repeat the inspections specified in paragraphs (g)(1) and (g)(2) of this AD thereafter at the repetitive intervals specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, as applicable.

(1) For Model A310–203, –204, –221, and –222 airplanes: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD within 3,500 flight hours or 1,700 flight cycles, whichever occurs first since the most recent inspection.

(2) For Model A310–304, –322, –324, and –325 airplanes having an AFT of less than 4 hours: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD within 4,600 flight hours or 1,600 flight cycles, whichever occurs first since the most recent inspection.

(3) For Model A310–304, –322, –324, and –325 airplanes having an AFT of equal to or more than 4 hours: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD within 6,100 flight hours or 1,200 flight cycles, whichever occurs first since the most recent inspection.

(j) Compliance Times if No Ultrasonic Equipment Is Available

If no ultrasonic equipment is available for the initial or second inspection required by paragraph (g) or (h) of this AD, accomplish the detailed inspection specified in paragraph (g)(1) of this AD within the applicable compliance times specified in paragraphs (j)(1) and (j)(2) of this AD. After accomplishing the detailed inspection, do the inspections specified in paragraphs (g)(1) and (g)(2) of this AD at the applicable compliance times specified by paragraphs (i)(1), (i)(2), and (i)(3) of this AD. Subsequently, repeat the inspections specified in paragraphs (g)(1) and (g)(2) of this AD thereafter at the applicable repetitive intervals specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) For airplanes not previously inspected before the effective date of this AD using the

service information identified in paragraph (j)(2)(i), (j)(2)(ii), or (j)(2)(iii) of this AD: Do the actions required by paragraph (g)(1) of this AD within the initial compliance time specified by paragraphs (h)(1), (h)(2), and (h)(3) of this AD, as applicable.

(2) For airplanes previously inspected before the effective date of this AD using the service information identified in paragraph (j)(2)(i), (j)(2)(ii), or (j)(2)(iii) of this AD: Do the actions required by paragraph (g)(1) of this AD within the applicable compliance times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(i) Airbus Service Bulletin A310–57–2096, dated May 6, 2008.

(ii) Airbus Service Bulletin A310–57–2096, Revision 01, dated August 5, 2010.

(iii) Airbus Service Bulletin A310–57–2096, Revision 02, dated March 5, 2014.

(k) Repair of Cracking

If any cracking is found during any inspection required by paragraph (g), (h), (i), or (j) of this AD, before further flight, repair the cracking using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Accomplishing the repair specified in this paragraph terminates the repetitive inspections required by paragraph (h), (i), or (j) of this AD, as applicable, for the repaired area only.

(l) Definition of Average Flight Time (AFT)

For the purposes of this AD, the AFT should be established as specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD for the determination of the compliance times.

(1) The inspection threshold is defined as the total flight hours accumulated (counted from take-off to touch-down), divided by the total number of flight cycles accumulated at the effective date of this AD.

(2) The initial inspection interval is defined as the total flight hours accumulated divided by the total number of flight cycles accumulated at the time of the initial inspection threshold.

(3) The second inspection interval is defined as the total flight hours accumulated divided by the total number of flight cycles accumulated between the initial and second inspection threshold.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraph (m)(1), (m)(2), or (m)(3) of this AD.

(1) Airbus Service Bulletin A310–57–2096, dated May 6, 2008, which was incorporated by reference in AD 2010–04–03.

(2) Airbus Service Bulletin A310–57–2096, Revision 01, dated August 5, 2010, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A310–57–2096, Revision 02, dated March 5, 2014, which is not incorporated by reference in this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): Except as required by paragraph (k) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0005, dated January 7, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3985.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 1, 2016.

Phillip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–16210 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0012]

RIN 1625–AA08

Special Local Regulation; Bucksport/Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Bucksport/Lake Murray Drag Boat Fall Nationals, on September 10 and September 11, 2016. This special local regulation is necessary to ensure the safety of participants, spectators, and the general public during the event. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 10, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0012 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On December 27, 2015, the Bucksport Marina notified the Coast Guard that it will sponsor a series of drag boat races from 1 p.m. to 7 p.m. on September 10 and September 11, 2016. The legal basis for the proposed rule is the Coast Guard's Authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to ensure safety of life on the navigable water of the United States during the Bucksport/Lake Murray Drag Boat Fall Nationals, a series of high speed boat races.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Bucksport/Lake Murray Drag Boat Fall Nationals, on September 10 and September 11, 2016. Approximately 75 powerboats are expected to participate in the races and approximately 35 spectator vessels are expected to attend the event. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss the First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 or under section 1 of E.O. 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulation would be enforced for only six hours a day over a two-day period; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended requires Federal agencies to consider the potential impact of regulations on "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–0012 to read as follows:

§ 100.T07–0012 Special Local Regulations; Bucksport/Lake Murray Drag Boat Spring Nationals, Atlantic Intracoastal Waterway, Bucksport, SC.

(a) *Regulated area.* All waters of the Atlantic Intracoastal Waterway encompassed by a line connecting the following points: Point 1 in position 33°39′13″ N., 079°05′36″ W.; thence west to point 2 in position 33°39′17″ N., 079°05′46″ W.; thence south to point 3 in position 33°38′53″ N., 079°05′39″ W.; thence east to point 4 in position 33°38′54″ N., 079°05′31″ W.; thence north back to point 1. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in Bucksport/Lake Murray Drag Boat Fall Nationals or serving as safety vessels. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced daily from 1 p.m. to 7 p.m. on September 10, and September 11, 2016.

Dated: June 27, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–16333 Filed 7–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 164

[Docket No. USCG–2015–0926]

RIN 1625–AC27

Tankers—Automatic Pilot Systems in Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to permit tankers with automatic pilot systems that meet certain international standards to operate using those systems in waters subject to the shipping safety fairway or traffic separation scheme controls specified in our regulations. The proposed amendments would remove an unnecessary regulatory restriction, update the technical

requirements for automatic pilot systems, and promote the Coast Guard's maritime safety and stewardship (environmental protection) missions by enhancing maritime safety.

DATES: Comments and related material must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before October 11, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0926 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Viewing material proposed for incorporation by reference. Make arrangements to view this material by calling the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: For information about this document or to view material proposed for incorporation by reference call or email LCDR Matthew J. Walter, CG–NAV–2, U.S. Coast Guard; telephone 202–372–1565, email *Matthew.J.Walter@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

We are not planning to hold a public meeting but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

BLS	Bureau of Labor Statistics
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
IEC	International Electrotechnical Commission
IMO	International Maritime Organization
INS	Integrated navigation system
LOD	Letter of Deviation
OMB	Office of Management and Budget
RA	Regulatory Analysis
SBA	Small Business Administration
§	Section symbol
TSS	Traffic separation scheme
U.S.C.	United States Code

III. Basis and Purpose

The legal basis for this rulemaking is provided by 46 U.S.C. 2103 and 3703. Section 2103 gives the Secretary of the department in which the Coast Guard is operating discretionary authority to "prescribe regulations to carry out the provisions of" 46 U.S.C. Subtitle II, which includes provisions for tanker carriage of liquid bulk dangerous cargoes. Section 3703 requires the Secretary to prescribe regulations for the operation, equipment, and other issues relating to the carriage of liquid bulk dangerous cargoes. In DHS Delegation No. 0170.1 (II)(70), (92.a), and (92.b), the Secretary delegated authority under these statutes to the Coast Guard.

The purpose of the proposed rule is to permit tankers with automatic pilot systems (autopilots, a generic term) that meet certain international standards to operate using those systems in waters subject to the shipping safety fairway or traffic separation scheme (TSS) controls specified in 33 CFR parts 166 and 167.

IV. Discussion of Proposed Rule

The proposed rule would amend 33 CFR 164.13, relating to the navigation of tankers underway. We promulgated § 164.13 in 1993.[1] Paragraph (d)(3) of the section prohibited a tanker's use of an autopilot in waters subject to 33 CFR part 166 shipping safety fairway[2] or 33 CFR part 167 TSS[3] controls, but made an exception for an autopilot working in concert with an "integrated navigation system" (INS),[4] as described in paragraph (e) of the section.

Immediately after we promulgated 33 CFR 164.13, we received a public comment noting that, at the time, "INS" described a wide range of shipboard systems for which there was no performance standard for the INS' accuracy, integrity, or reliability. Therefore, before § 164.13 was to take effect, we suspended paragraph (e)[5] until such time as we could develop the testing and methodology necessary for certifying that an INS has satisfactory accuracy, integrity, and reliability. The 1993 suspension was noted in an editor's note to 33 CFR 164.13.[6] The suspension had the effect of prohibiting the use of any autopilot in fairway or TSS waters.

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[1] 58 FR 27633 (May 10, 1993).

[2] A fairway is defined by 33 CFR 166.105(a) as "a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted." Part 166 lists the U.S. waters subject to fairway controls.

[3] A TSS is defined by 33 CFR 167.5(b) as "a designated routing measure which is aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes." Part 167 lists the U.S. waters subject to TSS controls.

[4] "The purpose of an integrated navigation system . . . is to provide 'added value' to the functions and information needed by the officer in charge of the navigational watch . . . to plan, monitor or control the progress of the ship." MSC.86(70) Annex 3, para. 1.

[5] 58 FR 36141 (Jul. 6, 1993).

[6] The note was inadvertently deleted in 1996, creating some industry confusion as to whether the suspension remained in effect. Some tanker owners and operators proceeded to install and operate INSs in TSS or fairway waters. The Coast Guard issued Marine Safety Information Bulletin 10/13 (Feb. 2013) to remind owner and operators that the suspension remained in effect. The editor's note was restored to the CFR in 2013.

Section 164.13(e) provided three criteria for showing that an INS can adequately control a tanker. The system must show that it:

1. Can maintain a predetermined trackline with a crosstrack error of less than 10 meters 95 percent of the time;
2. Can provide continuous position data accurate to within 20 meters 95 percent of the time; and
3. Has immediate override control.

Today, Criterion 2 is easily met by any tanker with a modern global navigation satellite system, and Criterion 3 is met by all systems now on the market.

Criterion 1, the ability to maintain a predetermined trackline with high accuracy, has benefited from advances in autopilot technology since 1993, in particular the advent of heading control systems,[7] track control systems,[8] or integrated navigation systems.[9] The International Electrotechnical Commission (IEC), a voluntary industry consensus standards-setting body, has developed a standard for heading and track control systems. The International Maritime Organization (IMO) has adopted resolutions endorsing this standard and has recommended to IMO member states that they adopt performance standards "not inferior to"[10] those the IMO has adopted. We believe that tanker autopilot systems meeting the IEC standard should be relieved of the regulatory burden that prohibits their use in fairway and TSS waters.

Since late 2013, we have relieved the existing regulatory burden on many tanker owners and operators by authorizing, on a case-by-case basis and in specific Coast Guard Captain of the Port (COTP) zones, deviations[11] from the § 164.13(d)(3) prohibition on a tanker's use of an autopilot. To date, we have authorized 35 deviations allowing tankers to operate specific IEC-compliant autopilots in fairway or TSS waters within specific COTP zones. However, the authorization of deviations does not relieve the regulatory burden for those who do not apply for authorization, and what relief we do provide comes at the expense of new burdens on industry and the Coast Guard. First, a tanker owner or operator must apply for a deviation in each COTP zone in which the tanker operates. Second, the cognizant COTP must ensure that the tanker's autopilot is IEC-compliant, and then authorize the deviation.

We would like to eliminate all these burdens on industry and the Coast Guard. Given that the apparent lack of standards in 1993 has now been remedied, we propose amending 33 CFR 164.13 to allow tankers equipped with specific IEC-compliant autopilots to use those systems in fairway and TSS waters, without having to apply to individual COTPs for deviations, and without the need for COTPs to ensure IEC compliance and issue deviations. Not only will this eliminate the current burdens on industry and the Coast Guard by giving force to IMO resolutions, it will also promote both the United States' leading role in IMO affairs, and the goals of Executive Order 13609, "Promoting International Regulatory Cooperation."[12] Moreover, our proposal could enhance maritime safety, because the autopilots in question offer far greater precision and navigational safety than conventional autopilots, and arguably, even human steering.

For these reasons, we propose amending 33 CFR 164.13(d), incorporating the existing substance of paragraph (d) and suspended paragraph (e) with the substantive changes we will describe, and also with nonsubstantive wording changes that are intended to improve § 164.13's clarity. Except as noted, those nonsubstantive changes are minor.

In the introductory language in (d), we would make it clear that the paragraph preempts (makes invalid) State or local laws intended to regulate the same topic. Also, instead of the generic term "autopilot," we would specify that (d) authorizes the use of only a heading or track control system.

In paragraph (d)(1), we would retain the existing § 164.13(d)(3)(iii) and (iv) prohibitions against using a track or heading control system within a half nautical mile of shore or within any anchorage ground specified in 33 CFR part 110.

In paragraph (d)(2), we would retain, but substantially revise for clarity, the existing § 164.13(d)(2) requirement for the full-time presence of a qualified person to assume manual control of the tanker's steerage.

In paragraph (d)(3), we would replace the existing § 164.13(d)(1) reference to an IMO autopilot compliance standard with a reference to two editions of the IEC standard for heading and track control systems.

We would remove existing suspended paragraph (e). As revised, paragraph (d) would replace the substance of that paragraph by setting new requirements for the use of heading or track control systems in fairway or TSS waters.

V. Incorporation by Reference

Material proposed for incorporation by reference in 33 CFR 164.13 appears in the proposed amendment to 33 CFR 164.03. See **ADDRESSES** for information on viewing this material. Copies of the material are available from the sources listed in § 164.03. Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference. We propose incorporating the International Electrotechnical Commission standard IEC 62065, Edition 1.0 (2002–03) and Edition 2.0 (2014–02). Both editions of this standard specify operational and performance requirements and tests for heading and track control systems.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a "significant regulatory action," under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

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[7] A heading control system, "in conjunction with its source of heading information, should enable a ship to keep a preset heading with minimum operation of the ship's steering gear." IMO Resolution MSC.64 (67), Annex 3, para. 2.1.

[8] "Track control systems in conjunction with their sources of position, heading and speed information are intended to keep a ship automatically on a pre-planned track over ground under various conditions and within the limits related to the ship's maneuverability. A track control system may additionally include heading control." IMO Resolution MSC.74(69) Annex 2, para. 1.

[9] "An INS is a combination of systems that are interconnected to increase safe and efficient navigation by suitably qualified personnel." IMO Resolution MSC.86(70), Annex 3, para. 3.3. An INS incorporates either a heading or track control system.

[10] IMO Resolution MSC.86(70), para. 3 (Dec. 8, 1998). Resolution MSC.86(70) applies to INS systems installed on or after Jan. 1, 2000. Resolution MSC.252(83) uses identical "not inferior to" language in recommending measures applicable to INS systems installed on or after Jan. 1, 2011.

[11] Under 33 CFR 164.55. Deviations are authorized by letters of deviation issued by the cognizant COTP.

[12] 77 FR 26413 (May 4, 2013).

A combined preliminary regulatory action (RA) and Threshold Regulatory Flexibility Analysis follows and provides an evaluation of the economic impacts associated with this proposed rule. The table which follows provides a summary of the proposed rule's costs and benefits.

TABLE 1—SUMMARY OF THE PROPOSAL'S IMPACTS

Category	Summary
Potentially Affected Population	An estimated 9,458 foreign-flagged vessels that are owned by 2,285 companies and 95 U.S.-flagged vessels that are owned by 40 businesses.
Costs (7% discount rate) (costs only accrue in the first year)	$12,403.
10-Year Total Quantified Cost Savings (7% discount rate)	$85,220.
10-Year Net Cost Savings (7% discount rate)	$72,816.
Annualized Net Savings (7% discount rate)	$10,367.
Unquantified Benefits	* Improve effectiveness without compromising safety. * Prevent misuse and misunderstandings. * Improved goodwill between regulated public and Coast Guard.

The proposed rule would revise the existing regulations regarding navigation on tankers. It would update the regulations to lift the suspension on tanker use of autopilot systems that has been in place since 1993 and which is no longer needed and update the performance standard for traditional autopilot systems referenced in 33 CFR 164.13(d). The proposed rule, if finalized, would remove an unnecessary regulatory restriction and result in an overall cost savings for the regulated public and the Coast Guard.

Affected Population

Based on the Coast Guard's MISLE database, we estimate that this proposed rule would affect approximately 9,458 foreign-flagged vessels and approximately 95 U.S.-flagged vessels. No governmental jurisdictions would be impacted.

Costs

The Coast Guard expects that this rule, if promulgated, would result in one-time costs of approximately $12,403 (7% discount) or an undiscounted cost of $13,272.[13] These costs would be derived by regulated entities needing to communicate to their vessel staff information about the proposed change (a regulatory familiarization cost). The Coast Guard estimates that approximately 4 minutes (0.067 hour) would be expended per company to do so; these communications are anticipated to be via electronic bulletin boards or mass distribution email. Labor costs are estimated at $85.20 per hour (fully loaded to account for the cost of employee benefits) for an operations manager based on a mean wage rate of $55.81; this estimate is based on Bureau of Labor Statistics (BLS) Occupational Employment Statistics, Occupational Employment and Wages data, for General and Operations Managers for Industrial Production (11–1021, May 2013).[14] From there, we applied a load factor of 1.53, to determine the actual cost of employment to employers and industry.[15] The following table presents the estimated cost of compliance with the rulemaking.

TABLE 2—TOTAL ESTIMATED COST OF REGULATORY FAMILIARIZATION

	Discounted 7%	Discounted 3%	Undiscounted
Year 1	$12,403	$12,885	$13,272
Year 2	0	0	0
Year 3	0	0	0
Year 4	0	0	0
Year 5	0	0	0
Year 6	0	0	0
Year 7	0	0	0
Year 8	0	0	0
Year 9	0	0	0
Year 10	0	0	0
Total	12,403	12,885	13,272
Annualized	1,766	1,511	1,327

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[13] As derived by the summation of the equations: [0.067 hour * $85.20 marine operations manager wage rate * (2,285 foreign-flagged vessel owner/operators + 40 U.S.-flagged vessel owner/operators)] * 7% discount rate.

[14] The reader may review the source data at *http://www.bls.gov/oes/2013/may/oes111021.htm*. Also please see *http://www.bls.gov/oes/2013/may/oes436014.htm* for the wage rate for an administrative assistant. After adding the load factor the wage rate for an administrative assistant is estimated to be $24.96. The wage rate for a lead engineer is estimated to be $100.22, which is derived from the product of the unloaded wage rate as found on the BLS Web site (*http://www.bls.gov/oes/2013/may/oes119041.htm*) and the load factor (1.53 rounded).

[15] This load factor is calculated specifically for production, transportation and material moving occupations, Full-time, Private Industry (Series ID: CMU2010000520000D,CMU2010000520000P and CMU2020000520000D,CMU2020000520000P), 2014, 4th Quarter. Total cost of compensation per hour worked: $27.31, of which $17.89 is wages, resulting in a load factor of 1.526551 ($27.31/$17.89). USCG rounded this factor to 1.53 (rounded to the nearest hundredth). (Source: *http://www.bls.gov/ncs/ect/data.htm* as accessed on March 18, 2015. Using similar applicable industry groups and time periods results in the same estimate of load factor.

The Coast Guard has not estimated a cost to comply with the documents proposed to be incorporated by reference (International Electrotechnical Commission's standards IEC 62065, 2014–02; IMO Resolution MSC.74(69), Annex 2.) The Coast Guard has not estimated a cost for these provisions because manufacturers participate in the development of the standards at IEC and are aware of the changes to standards. As a result they already have been producing equipment to meet the standard; manufacturers typically will begin to make manufacturing modifications even before such changes are formally adopted. The proposal would not require owners and operators to acquire the standards; they would not need the standard in hand to be in compliance. They simply would look for evidence from manufacturers that products meet or exceed the standard before purchase. For these reasons, the Coast Guard has not included a cost for these provisions.

No equipment would be required by the rule. As well, some parts of the affected population would experience no cost increase due to the rulemaking, since some vessels do not use autopilot under the conditions noted in the proposal; therefore they would have no costs. No further action would be required by these parties. Only 40 U.S. vessel owners and operators and approximately 2,285 foreign vessel owners and operators are potentially impacted; for these, they would incur a cost only if they need to communicate to staff the proposed rules changes on the use of autopilot.

Cost Savings

The proposal would result in cost savings for the regulated public and the Coast Guard. The proposed rule would prevent unnecessary inquiries to the Coast Guard regarding regulations and the filing of (and Coast Guard processing of) letters of deviation (LODs). With regard to the first cost savings, the Coast Guard estimates that it spends a collective 20 hours annually (one hour per call on average) fielding calls from the regulated public seeking clarification of the intent of the existing regulations. This labor cost for the regulated public and the Coast Guard would be eliminated by the proposed rule.[16] To estimate these costs, the Coast Guard used publicly available data as found in the Memorandum of the Commandant entitled "Coast Guard Reimbursable Standard Rates."[17] Labor costs are estimated for the Coast Guard at $88[18] for a Lieutenant Commander. This figure represents a wage rate with a fully loaded labor factor of 1.85 for uniformed Coast Guard positions. For the regulated public, the wage rate for a lead engineer is estimated to be $100.22 per hour, based upon a load factor applied to the BLS wage data; the unloaded wage rate for an engineering manager is $65.65 and the load factor is 1.53 (rounded).[19] The total cost savings from the elimination of inquiries to Coast Guard is estimated at $3,764 per year.[20]

In addition, the proposal would save the regulated public and the Coast Guard labor costs associated with the filing and processing of annual LODs. The proposal would preclude the need for the regulated public to file an LOD. In doing so, it would preclude the need for the Coast Guard to process the LOD and respond to it. The Coast Guard estimates that each LOD requires a given marine business to expend 1.7 hours of an operations manager's time and 0.5 hour of an administrative assistant's time to prepare and submit the LOD. These precluded costs would be incurred annually and would be calculated by the sum of the products of the loaded wage rates and labor duration estimates times the number of requests per year.[21] In turn, we estimate that the Coast Guard would spend 0.6 hour of a Lieutenant Commander's time; and 0.5 of an administrative assistant's time to process, review and respond to each LOD request. The loaded wage rates for these positions are: $88 for a Lieutenant Commander (O–4); $58 for an administrative assistant (GS–11). These wage rates may be found in Commandant Instruction P (Enclosure 2's in-government rates).

To estimate these cost savings, we requested data from Coast Guard sectors on their experience with processing LODs. Based on that review, we estimated the number of LOD requests to be approximately 35 annually, which would be precluded by the proposed rule. We also reviewed previous Coast Guard regulatory analyses for the labor costs of the regulated public for filing waiver requests. Our estimated durations for labor for the regulated public and for the Coast Guard are based on Coast Guard experience with LOD requests as well as an existing information collection, which is entitled Ports and Waterways Safety—Title 33 CFR Subchapter P (RIN 1625–0043; the Coast Guard's proposed rule for cranes (RIN 1625–AB78, USCG–2011–0992); and the proposed and final rules for Vapor Control Systems (RIN 1625–AB37, USCG–1999–5150). We used the existing information collection 1625–0043 to obtain the estimates of existing tasks; we used the information collections for cranes and vapor control systems to estimate tasks that were not in 1625–0043, but were similar to the tasks of these information collections. We estimate that the regulated public would spend approximately 2.2 hours to prepare the paperwork and to file an LOD.[22] In addition, we estimate that the Coast Guard spends 1.1 hours in total for each LOD.[23]

Total cost savings per year would be $12,133.[24] The following table presents the estimated cost savings.

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[16] 20 hours annually * wage rate for lead engineer. The Government's cost is estimated by the equation 20 hours annually * wage rate for Coast Guard Lieutenant Commander (O–4).

[17] The memorandum is dated February 11, 2015 and is numbered COMDTINST 7310.1P. Enclosure 2 lists the relevant data. The memorandum may be found on *www.uscg.mil/directives/ci/7000-7999/CI_7310_1p.PDF. This document is known as Commandant Instruction P.*

[18] See *http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1p.PDF,* See Enclosure 2 for in-government rate of an O–4 officer and a GS–11 employee.

[19] This is the wage rate for 11–9041 Architectural and Engineering Managers as found at *http://www.bls.gov/oes/2013/may/oes119041.htm* and as accessed on February 12, 2015. As noted earlier, a load factor of 1.53 was applied.

[20] Coast Guard Cost Savings: ($88 Lt Commander * 1 hour * 20 calls per year = $1760) Regulated Public Cost Savings: ($100.22 lead engineer * 1 hour * 20 calls per year = $2004).

[21] ($85.20/hour operations manager's wage rate * 1.7 hours) + ($24.96/hour admin assistant's wage rate * 0.5 hour) * (35 submissions) Wage data may be found from the US Bureau of Labor Statistics (*http://www.bls.gov/oes/2013/may/oes111021.htm* and *http://www.bls.gov/oes/2013/may/oes436014.htm*).

[22] 35 waivers annually * [1.7 hours * wage rate for operations manager + 0.5 hour * wage rate for an admin assistant].

[23] 35 waivers annually * [0.6 hour * wage rate for Lt. Commander + 0.5 hour * wage rate for Coast Guard admin assistant].

[24] $4,623 in Government cost savings plus $7,510 in regulated public cost savings.

TABLE 3—TOTAL COST SAVINGS BY YEAR

Year	Cost savings to the regulated public			Cost savings to the government			Total estimated cost savings		
	Annualized 7%	Annualized 3%	Undiscounted	Annualized 7%	Annualized 3%	Undiscounted	Annualized 7%	Annualized 3%	Undiscounted
1	−$7,019	−$7,292	−$7,510	−$4,321	−$4,488	−$4,623	−$11,340	−$11,780	−$12,133
2	−6,560	−7,079	−7,510	−4,038	−4,358	−4,623	−10,598	−11,437	−12,133
3	−6,131	−6,873	−7,510	−3,774	−4,231	−4,623	−9,904	−11,104	−12,133
4	−5,730	−6,673	−7,510	−3,527	−4,107	−4,623	−9,256	−10,780	−12,133
5	−5,355	−6,478	−7,510	−3,296	−3,988	−4,623	−8,651	−10,466	−12,133
6	−5,004	−6,290	−7,510	−3,081	−3,872	−4,623	−8,085	−10,161	−12,133
7	−4,677	−6,107	−7,510	−2,879	−3,759	−4,623	−7,556	−9,866	−12,133
8	−4,371	−5,929	−7,510	−2,691	−3,649	−4,623	−7,062	−9,578	−12,133
9	−4,085	−5,756	−7,510	−2,515	−3,543	−4,623	−6,600	−9,299	−12,133
10	−3,818	−5,588	−7,510	−2,350	−3,440	−4,623	−6,168	−9,028	−12,133
10-Year	−52,750	−64,065	−75,104	−32,470	−39,435	−46,230	−85,220	−103,500	−121,334
Annualized	−7,510	−7,510	....	−4,623	−4,623	....	−12,133	−12,133	....

The proposed rule would result in a net cost savings of $72,816 (7% discount rate for a 10 year period) since the estimated cost savings exceed the costs of the proposed rule. Costs are incurred only in year 1. The net cost savings of the proposal are calculated by subtracting the total cost of the rule ($12,403) from the total cost savings ($85,220). These cost savings result from precluded labor costs to the regulated public and to the Coast Guard as noted earlier. Table 4 presents the cost savings of the proposal.

TABLE 4—ESTIMATED NET COST SAVINGS

	Discounted 7%	Discounted 3%	Undiscounted
Year 1	$1,064	$1,105	$1,138
Year 2	−10,598	−11,437	−12,133
Year 3	−9,904	−11,104	−12,133
Year 4	−9,256	−10,780	−12,133
Year 5	−8,651	−10,466	−12,133
Year 6	−8,085	−10,161	−12,133
Year 7	−7,556	−9,866	−12,133
Year 8	−7,062	−9,578	−12,133
Year 9	−6,600	−9,299	−12,133
Year 10	−6,168	−9,028	−12,133
Total	−72,816	−90,615	−108,062
Annualized	−10,367	−10,623	−10,806

Benefits

The proposed rule would amend existing regulations to remove the requirements that prohibit tanker use of autopilot systems. The proposal also would update the performance standard for traditional autopilot systems. The Coast Guard is pursuing this amendment to existing standards in order to prevent inefficient use of labor and to add clarity to the current system; the proposal would prevent inefficient use of labor (as noted in the cost savings discussion earlier) and would add clarity to the regulated public as to the need for safety precautions. The proposed changes would improve regulatory intent and keep regulations in step with existing technology without compromising the existing level of safety. Instead, the proposed rule would promote maritime safety by eliminating confusion associated with outdated regulations that have not kept pace with technology.

Regulatory Alternatives Considered

In developing the proposal, the Coast Guard considered the following alternatives when developing the proposed rule:

1. Take no action.
2. Develop a different time table for small entities.
3. Provide an exemption for small entities (from the proposed rule or any part thereof).

The first alternative is not preferred because it does not offer solutions to issues identified earlier in the preamble. It would perpetuate an inefficient use of labor on the part of the regulated public and the Coast Guard. The second alternative prevents small entities from benefiting from the efficiencies made possible by this regulation as soon as the larger companies, while the third alternative would prevent small entities from enjoying the benefits of these efficiencies at all. As this regulation reduces an unnecessary regulatory restriction, the Coast Guard does not want to restrict its applicability to small entities in any way.

Most entities are expected to experience no additional cost; for those who would incur a cost, the Coast Guard estimates costs to be less than $6 per entity.[25] Cost savings would accrue only to those covered by the rulemaking and who have not already applied for a waiver or who are not in compliance with the existing regulations. An exemption would preclude cost savings to those under the exemption; the Coast Guard estimates that cost savings would be less than $200 per affected entity annually.[26]

For the reasons discussed earlier, we rejected these alternatives in favor of the preferred alternative. The preferred alternative (the proposed rule) would amend existing regulations to remove the requirements that prohibit tanker use of autopilot systems. The preferred alternative also would update the performance standard for traditional autopilot systems.

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[25] As noted earlier, the cost to communicate information is calculated by the equation $85.20 wage rate * 0.067 hour.

[26] Labor to make an inquiry is estimated by the equation: 1.7 hours * wage rate for operations manager + 0.5 hour * wage rate for an admin assistant.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

The Coast Guard expects that this proposed rule would not have a significant economic impact on small entities. As described in the "Regulatory Planning and Review" section, the Coast Guard expects this proposed rule to result in net cost savings to regulated entities. An estimated 67 percent of the regulated companies (a total of 27 businesses) are considered small by the Small Business Administration (SBA) industry size standards; for any company for which we were not able to find SBA size data, we assumed it was a small entity. The compliance costs for this proposed rule (which are only regulatory familiarization costs) would amount to less than 1 percent of revenue for all small entities ($5.71 per entity) and, therefore, do not represent a significant economic impact on a substantial number of small entities. Costs would be incurred only in the first year of the final rule's enactment. No additional costs for labor or equipment would be incurred in future years. In fact, as this rule is removing an unnecessary regulatory restriction, this rule is expected to reduce labor costs. No small governmental jurisdictions are impacted by the proposed rule.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would affect it economically.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard (see **ADDRESSES**). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520; the proposed rule would not add requirements for recording and recordkeeping to the existing collection which is entitled Ports and Waterways Safety—Title 33 CFR Subchapter P and which is numbered 1625–0043. However, the proposed rule would adjust this collection. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The proposed rule would not require additional tasks by the regulated public but would eliminate the need for the regulated public to file LODs under conditions as specified by the proposed rule. The Coast Guard estimates that there would be 35 fewer LODs filed annually because of the proposed rule's changes.

The existing collection of information requires LODs to be submitted to the Coast Guard for various reasons; one of which is for tankers to use autopilot under conditions noted in the proposal. Under the proposed rule, Coast Guard would no longer require an LOD for tankers as specified in the proposal. The proposal would preclude the need for 35 or fewer LODs annually to be submitted to the Coast Guard for approval. It also would preclude the need for the Coast Guard to process and approve those LODs. The collection of information aids the regulated public in assuring safe practices; however, the Coast Guard has concluded that this particular use of LODs is no longer warranted.

This proposed rule would amend an existing collection of information as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520); the rule removes regulatory requirements which necessitate the filing of LODs under conditions as specified in the proposed rule. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Ports and Waterways Safety—Title 33 CFR Subchapter P.

OMB Control Number: 1625–0043.

Summary of the Collection of Information: The existing collection of information requires written responses such as LODs. Under the proposed rule, the Coast Guard would no longer require an LOD to be submitted under specific conditions as noted in the proposal; LODs would continue to be required for other existing reasons. The collection of information aids the regulated public in assuring safe practices.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the regulatory requirements.

Proposed Use of Information: The Coast Guard uses this information to determine whether an entity request for deviation is justified.

Description of the Respondents: The respondents are owners and operators of vessels which travel in the regulated waterways as noted in the regulatory text.

Number of Respondents: The burden of this proposed rule for this collection of information includes submittal of LODs. This collection of information applies to owners/operators of vessels which travel in the regulated waterways. We estimate the maximum number of respondents is 35 per year.

Frequency of Responses: Letters of Deviation under the conditions noted in the proposal are filed once per year. The proposal would eliminate the need for this particular use of the LOD. The Coast Guard estimates that 35 fewer LODs would be filed annually because of the proposal.

Burden of Response: The burden of response for each LOD is an estimated 2.2 hours.

Estimate of Total Annual Burden: This proposed rule would decrease burden hours by 77 hours from the previously approved burden estimate of 2,110.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We invite public comment on the proposed collection of information. Advise us on how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132. Our analysis is explained below.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). This rule is promulgated under Title II of the Ports and Waterways Safety Act[27] (46 U.S.C. 3703) and amends existing regulations for tank vessels regarding certain vessel equipment technical standards and operation. Under the principles discussed in Locke, States are foreclosed from regulating within this field. Thus, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under E.O. 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Tribal Governments

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Tribal governments, on the relationship between the Federal Government and Tribal governments, or on the distribution of power and responsibilities between the Federal Government and Tribal governments.

K. Energy Effects

We have analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under E.O. 13211 because it is not a "significant regulatory action" under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule uses voluntary consensus standards to track control and integrated navigation systems used in vessel automatic pilot systems. These standards provide parameters within which these systems must operate to ensure proper navigational control given the vessel's position, heading, speed, and other factors. The standards were developed by the International Electrotechnical Commission, an international voluntary consensus standards-setting organization, and the IMO.

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[27] Public Law 92–340, 86 Stat. 424, as amended; codified at 33 U.S.C. 1221 *et seq-* 1232.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370f, and we have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this categorical exclusion determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

This proposed rule involves regulations concerning tank vessel equipment approval and operation. Thus, this proposed rule will likely be categorically excluded under Section 2.b.2, figure 2–1, paragraph 34(d), (e), and (i) of the Instruction and Section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 164

Marine, Navigation (water), Incorporation by reference, Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 164 as follows:

Title 33—Navigation and Navigable Waters

PART 164—NAVIGATION SAFETY REGULATIONS

■ 1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; and E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.46 also issued under 46 U.S.C. 70114 and Sec. 102 of Pub. L. 107–295. Sec. 164.61 also issued under 46 U.S.C. 6101. The Secretary's authority under these sections is delegated to the Coast Guard by Department of Homeland Security Delegation No. 0170.1, para. II (70), (92.a), (92.b), (92.d), (92.f), and (97.j).

■ 2. Amend § 164.03 by adding paragraph (h) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(h) International Electrotechnical Commission (IEC), 3, rue de Varembe, Geneva, Switzerland, +41 22 919 02 11, *http://www.iec.ch/.*

(1) IEC 62065 Edition 1.0 (2002–03), Maritime navigation and radiocommunications equipment and systems—Track control systems—Operational and performance requirements, methods of testing and required test results—incorporation by reference approved for § 164.13(d).

(2) IEC 62065 Edition 2.0 (2014–02), Maritime navigation and radiocommunications equipment and systems—Track control systems—Operational and performance requirements, methods of testing and required test results—incorporation by reference approved for § 164.13(d).

■ 3. Amend § 164.13 by removing paragraph (e) and revising paragraph (d) to read as follows:

§ 164.13 Navigation underway: Tankers.

* * * * *

(d) This paragraph (d) has preemptive effect over State or local regulation within the same field. A tanker may navigate using a heading or track control system only if—

(1) The tanker is beyond one-half nautical mile off shore or not within waters specified in 33 CFR part 110 (anchorages);

(2) There is a person, competent to steer the vessel, present to assume manual control of the steering station; and

(3) The system meets the heading or track control specifications of either IEC 62065 (2002:03) or IEC 62065 (2014:02) (incorporated by reference, see § 164.03).

Dated: June 28, 2016.

David C. Barata,

Acting Director of Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2016–15791 Filed 7–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0077]

RIN 1625–AA00

Safety Zone, Daytona Beach Wings and Waves Air Show; Atlantic Ocean, Daytona Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the waters of the Atlantic Ocean east of Daytona Beach, Florida during the Daytona Beach Wings and Waves Air Show. This action is necessary to provide for the safety of life on the navigable waters surrounding the event. This safety zone will be enforced daily 11 a.m. to 4:30 p.m., from October 6 through October 9, 2016. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 10, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0077 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714–7616, email *Allan.H.Storm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On December 15, 2015, Embry Riddle Aeronautical University/David Schultz Airshows LLC submitted a marine event application to the Coast Guard for the Daytona Beach Wings and Waves Air Show that will take place from October 6 through 9, 2016. The air show will consist of various flight demonstrations over the Atlantic Ocean, just offshore from Daytona Beach, FL. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows from the water. The Captain of the Port (COTP) Jacksonville has determined that a safety zone is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The purpose of the rulemaking is to ensure the safety of vessels and persons during the air show on the navigable waters of the Atlantic Ocean in Daytona Beach, FL. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 11 a.m. to 4:30 p.m. on October 6 through October 9, 2016. The safety zone will encompass all waters within an area approximately two nautical miles parallel to the shoreline, and one half nautical mile out into the Atlantic Ocean offshore from Daytona Beach, Florida. The duration of the zone is intended to ensure the safety of the public and these navigable waters during the aerial flight demonstrations. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text the Coast Guard is proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for five and a half hours on each of the four days the air show is occurring. Moreover, the Coast Guard would issue a broadcast notice to mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit persons and vessels from transiting through a one square nautical mile regulated area during a four day air show lasting five and a half hours daily. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–0077 to read as follows:

§ 165.T07–0077 Safety Zone; Daytona Beach Wings and Waves Air Show, Atlantic Ocean, Daytona Beach, FL.

(a) *Regulated Area.* The following regulated area is a safety zone located offshore from Daytona Beach, FL. All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 29°14′44.72″ N., 081°0′46.90″ W.; thence northeast to Point 2 in position 29°14′58.74″ N., 081°0′16.18″ W.; thence southeast to Point 3 in position 29°13′3.80″ N., 080°59′21.78″ W.; thence southwest to Point 4 in position 29°12′54.63″ N., 080°59′53.87″ W.; thence northwest back to origin. These coordinates are based on North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at 904–714–7557, or a designated representative via VHF–FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF–FM channel 16 or by on-scene designated representatives.

(d) *Enforcement Period.* This section will be enforced daily 11 a.m. to 4:30 p.m. from October 6 through October 9, 2016.

Dated: June 27, 2016.

J.F. Dixon,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2016–16331 Filed 7–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AP74

Authority To Solicit Gifts and Donations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its National Cemeteries regulation on the prohibition of officials and employees of VA from soliciting contributions from the public or authorizing the use of their names, name of the Secretary, or the name of VA for the purpose of making a gift or donation to VA. The amended regulation would give the Under Secretary of Memorial Affairs (USMA), or his designee, authority to solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of VA by an individual or organization in any campaign or drive for donation of money or articles to VA for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

DATES: Comments must be received by VA on or before August 10, 2016.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to "RIN 2900–AP74—Authority to Solicit Gifts and Donations." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Howard, Chief of Staff, National Cemetery Administration (NCA), Department of Veterans Affairs, (40A), 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6215. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 2407 authorizes the Secretary of VA to "accept gifts, devises, or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery." In 1978, VA published implementing regulations for this authority at 38 CFR 1.603 (now redesignated as 38 CFR 38.603). 43 FR 26572 (June 21, 1978). Included in this regulation, at § 38.603(b), is a prohibition on the solicitation of contributions from the public by any VA official or employee. Unfortunately, as was common at the time, the proposed and final rulemaking documents provide less information regarding the rationale for the regulations than is commonly provided today, so the full rationale for this regulation, including the reason for the prohibition on solicitations, is no longer available. The prohibition is not contained in the statutory authority at section 2407, nor does the plain language of the statute indicate a rationale for the prohibition. We propose to ease this restriction because it negatively impacts VA's ability to fully realize the potential of its authority to accept gifts and donations for the benefit of the national cemeteries.

The gift and donation acceptance authority at section 2407 is just one of several authorities under which VA may accept gifts or donations that advance the mission or enhance the services that VA provides. These authorities include, among others, 38 U.S.C. 521 (acceptance of funds to support recreational activities furthering the rehabilitation of disabled veterans); 2406 (gifts of land for national cemeteries); 8103 and 8104 (acceptance of land, interests in land, or facilities for use as medical facilities); and 8301 (acceptance of gifts for use in carrying out all laws administered by VA). None of these statutory authorities nor any implementing regulations for any of the authorities, includes a provision like that contained in § 38.603(b), prohibiting the solicitation of contributions.

Legal guidance indicates that such a prohibition is not required by law. In 2015, VA's Office of General Counsel (OGC) issued a precedent opinion concluding that VA's express statutory authority to accept gifts under section 8301 included the implied statutory authority to solicit those gifts. VAOPGCPREC 2–2015, Mar. 20, 2015. Outside VA, a 2001 opinion from the Office of Legal Counsel (OLC) of the Department of Justice found that the broad statutory authority granted by Congress in section 403(b)(1) of the Office of Government Ethics Authorization Act of 1996 to accept gifts implies the authority to solicit gifts. 25 Op. OLC 55, Jan. 19, 2001. VA believes that section 2407 similarly contains an implied statutory authority to solicit gifts and donations for the benefit of the national cemeteries and that, by prohibiting use of that implied statutory authority, the provision in § 38.603(b), in addition to not being legally necessary, may impede VA's ability to fully realize the authority provided to VA in section 2407. The ability of VA to operate other gift and donation programs under the authorities mentioned above, effectively and within legal parameters, in the absence of a prohibition on the ability of principals to solicit gifts and donations, indicates that a prohibition like that contained in § 38.603(b) is unnecessary.

Gifts and donations received by the national cemeteries under the authority of section 2407 have taken many forms, including monetary donations, donations of services and property (such as landscaping services or trees), and memorials and other commemorative works. Consistent with the plain language of the terms "gifts" and "donations," we would clarify in the regulation that gifts and donations include monetary donations, in-kind goods and services, and personal property. These gifts and donations from generous persons and organizations enhance the experience of visitors to the national cemeteries. The prohibition contained in § 38.603(b) impedes VA's ability to proactively advise donors or potential donors of gift and donation opportunities that could be beneficial to the national cemeteries. Although § 38.603(b) includes a provision that allows VA employees to discuss the "appropriateness" of a proposed gift, that discussion can only happen if a donor first approaches VA about a potential gift or donation. VA cannot proactively advise a donor that a particular gift or donation would be beneficial to the national cemeteries in general or any one national cemetery in particular. Easing the prohibition benefits not only the national cemeteries by ensuring that gifts and donations are more likely to be beneficial, but also is beneficial to donors who may not know of opportunities to provide beneficial gifts and donations to the national cemeteries. Therefore, we would amend § 38.603(b) to provide that the USMA, or his designee, may solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of VA by an individual or organization in any campaign or drive for money or articles to VA for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

While VA would ease the prohibition on solicitation of gifts and donations, the intent is not to remove the restriction in its entirety. VA maintains 133 national cemeteries, one national Veterans' burial ground, and 33 soldiers' lots and monument sites in 40 states and Puerto Rico, as national shrines, that is, places of honor and memory where visitors can sense the serenity, historic sacrifice, and nobility of purpose of those who have served in the military. The USMA is responsible for the operation of the national cemeteries and is in the best position to determine the appropriateness of any campaign to solicit gifts and donations. Although VA would replace the existing provision at § 38.603(b) with revised text that would allow the USMA or designee to solicit gifts and donations to VA for the purpose of beautifying, or for the benefit of, one or more national cemeteries, this rulemaking would not amend any other regulation governing solicitation or acceptance of gifts and donations under any other authority available to VA.

We propose to revise the authority citation for part 38 to include the statutory authority 38 U.S.C. 2407. We also propose to add this statutory authority at the end of § 38.603.

Administrative Procedure Act

Concurrent with this proposed rule, we are also publishing a separate, substantially identical direct final rule in this **Federal Register**. See RIN 2900–AP75. The simultaneous publication of these documents will speed notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553) should we have to withdraw the direct final rule due to receipt of a significant adverse comment.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without change. If VA receives a significant adverse comment, VA will publish a notice of receipt of a significant adverse comment in the **Federal Register** and withdraw the direct final rule. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment unless the comment states why the rule would be ineffective or unacceptable without the additional change.

Under direct final rule procedures, if no significant adverse comment is received within the comment period, the direct final rule will become effective on the date specified in RIN 2900–AP75. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that VA received no significant adverse comments and restating the date on which the final rule will become effective. VA will also publish a notice in the **Federal Register** withdrawing this proposed rule.

In the event that VA withdraws the direct final rule because of receipt of any significant adverse comment, VA will proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for this proposed rule runs concurrently with that of the direct final rule. VA will treat any comments received in response to the direct final rule as comments regarding this proposed rule as well. VA will consider such comments in developing a subsequent final rule. Likewise, VA will consider any significant adverse comment received in response to the proposed rule as a comment regarding the direct final rule as well.

VA has determined that it is not necessary to provide a 60-day comment period for this rulemaking because the rulemaking does not establish duties or benefits affecting members of the public, but merely makes a minor modification concerning the authority of certain officials or employees to solicit gifts and donations for the benefit of VA national cemeteries. VA has instead specified that comments must be received within 30 days after date of publication in the **Federal Register**.

Effect of Rulemaking

The Code of Federal Regulations, to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would only affect individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm,* by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers and titles affected by this document.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on June 30, 2016, for publication.

Dated: June 30, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 38 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. Revise the authority citation for part 38 to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. In § 38.603, revise paragraph (b) and add an authority citaiton to read as follows:

§ 38.603 Gifts and donations.

* * * * *

(b) The Under Secretary of Memorial Affairs, or his designee, may solicit gifts and donations, which include monetary donations, in-kind goods and services, and personal property, or authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for donation of money or articles to the Department of Veterans Affairs for the purpose of beautifying, or for the benefit of, one or more national cemeteries.

(Authority: 38 U.S.C. 2407)

[FR Doc. 2016–16232 Filed 7–8–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0313; FRL–9948–83–Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2012 annual $PM_{2.5}$ NAAQS. Section 110 requires that each state adopt and submit a SIP to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before August 10, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0313, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7039, or by email at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. A detailed technical support document (TSD) is included in this rulemaking docket to address the following: a description of CAA section 110(a)(1) and (2) infrastructure SIPs; the applicable elements under sections 110(a)(1) and (2); EPA's approach to the review of infrastructure SIP submissions, and EPA's evaluation of how Kansas addressed the relevant elements of sections 110(a)(1) and (2). This section provides additional information by addressing the following questions:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is proposing to approve the infrastructure SIP submission received from the State of Kansas on November 25, 2015. The infrastructure SIP submission addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 annual $PM_{2.5}$ NAAQS. A TSD is included as part of the docket to discuss the details of this proposal, including an analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is proposing to approve the November 25, 2015, infrastructure SIP submission from the State of Kansas which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 annual $PM_{2.5}$ NAAQS. The EPA's analysis of the submission is addressed in a TSD as part of the docket to discuss the proposal.

Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that Kansas' SIP will meet all applicable required elements of sections 110(a)(1) and (2) with respect to the 2012 annual $PM_{2.5}$ NAAQS.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

IV. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

V. Statutory Authority

The statutory authority for this section is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 22, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

■ 2. In § 52.870, the table in paragraph (e) is amended by adding the entry "(43) Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS" in numerical order to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(43) Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	11/16/2015	07/11/2016, [Insert **Federal Register** citation].	This action addresses the following CAA elements 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2016–16259 Filed 7–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0315; FRL–9948–67–Region 4]

Air Plan Approval; Georgia; Prong 4–2008 Ozone, 2010 NO_2, SO_2, and 2012 $PM_{2.5}$

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the portions of revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Department of Natural Resources (DNR), Environmental Protection Division (GAEPD), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO_2), 2010 1-hour Sulfur Dioxide (SO_2), and 2012 annual Fine Particulate Matter ($PM_{2.5}$) National

Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an "infrastructure SIP." Specifically, EPA is proposing to conditionally approve the prong 4 portions of Georgia's March 6, 2012, 8-hour Ozone infrastructure SIP submission; March 25, 2013, 2010 1-hour NO_2 infrastructure SIP submission; October 22, 2013, 2010 1-hour SO_2 infrastructure SIP submission; and December 14, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: Comments must be received on or before August 10, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0315 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this action, EPA is proposing to conditionally approve the prong 4 portions of Georgia's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS as discussed in section IV of this document.[1] All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to this proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** notices cited in the following subsections.

A. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour Ozone NAAQS to 0.075 parts per million. *See* 73 FR 16436 (March 27, 2008). States were required to submit infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS to EPA no later than March 12, 2011. Georgia submitted its infrastructure SIP submission on March 6, 2012, for the 2008 8-hour Ozone NAAQS.

B. 2010 1-Hour NO_2 NAAQS

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013. Georgia submitted its infrastructure SIP submission on March 25, 2013, for the 2010 1-hour NO_2 NAAQS.

C. 2010 1-Hour SO_2 NAAQS

On June 2, 2010, EPA revised the primary SO_2 NAAQS to an hourly standard of 75 parts per billion based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013. Georgia submitted its infrastructure SIP submission on October 22, 2013, for the 2010 1-hour SO_2 NAAQS.

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[1] Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval automatically becomes a disapproval on that date and EPA will issue a finding of disapproval.

D. 2012 Annual $PM_{2.5}$ NAAQS

On December 14, 2012, EPA revised the primary annual $PM_{2.5}$ NAAQS to 12 micrograms per cubic meter (μg/m^3). *See* 78 FR 3086 (January 15, 2013). States were required to submit infrastructure SIP submissions for the 2012 $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015. Georgia submitted its infrastructure SIP submission on December 14, 2015, for the 2012 $PM_{2.5}$ NAAQS.

II. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "each such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of Title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[2] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP requirements.[3] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[4] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[5] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[6]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS.

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[2] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[3] *See, e.g.,* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[4] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[5] *See, e.g.,* "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[6] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[7]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the "applicable requirements" of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the prevention of significant deterioration (PSD) program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[8] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[9] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[10] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Greenhouse Gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

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[7] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[8] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[9] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[10] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions;[11] (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[15]

III. What are the prong 4 requirements?

Section 110(a)(2)(D)(i)(II) includes a requirement that a state's implementation plan contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of Title I of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state's sources to impacts on visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

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[11] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. *See* "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[12] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[13] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[14] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

The 2013 Guidance delineates two ways in which a state's infrastructure SIP may satisfy prong 4. The first way is through an air agency's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

IV. What is EPA's analysis of how Georgia addressed prong 4?

Georgia's March 6, 2012, 2008 8-hour Ozone submission; March 25, 2013, 2010 1-hour NO_2 submission; October 22, 2013, 2010 1-hour SO_2 submission; and December 14, 2015, 2012 annual $PM_{2.5}$ submission cite to the State's regional haze SIP as satisfying prong 4 requirements. However, as explained below, EPA has not yet fully approved Georgia's regional haze SIP because the SIP relies on the Clean Air Interstate Rule (CAIR) to satisfy the nitrogen oxides (NO_X) and SO_2 Best Available Retrofit Technology (BART) requirements for the CAIR-subject electric generating units (EGUs) in the State and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.[16]

EPA demonstrated that CAIR achieved greater reasonable progress toward the national visibility goal than BART for NO_X and SO_2 at BART-eligible EGUs in CAIR affected states, and revised the regional haze rule to provide that states participating in CAIR's cap-and-trade programs need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 70 FR 39104 (July 6, 2005). As a result, a number of states in the CAIR region designed their regional haze SIPs to rely on CAIR as an alternative to NO_X and SO_2 BART for CAIR-subject EGUs. These states also relied on CAIR as an element of a long-term strategy for achieving their reasonable progress goals.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,[17] but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR.[18] On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS.

Due to CAIR's status as a temporary measure following the D.C. Circuit's 2008 ruling, EPA could not fully approve regional haze SIP revisions to the extent that they relied on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. On these grounds, EPA finalized a limited disapproval of Georgia's regional haze SIP on June 7, 2012 (77 FR 33642), triggering the requirement for EPA to promulgate a Federal Implementation Plan (FIP) unless Georgia submitted and EPA approved a SIP revision that corrected the deficiencies. EPA finalized a limited approval of Georgia's regional haze SIP on June 28, 2012 (77 FR 38501), as meeting the remaining applicable regional haze requirements set forth in the CAA and the regional haze rule.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 SO_2 emissions budget for Georgia.

Although Georgia's infrastructure SIP revisions cite to the regional haze program as satisfying the requirements of Prong 4, the State may not currently rely on its regional haze SIP to satisfy these requirements because the regional haze SIP is not fully approved. In addition, these revisions do not otherwise demonstrate that emissions within the State's jurisdiction do not interfere with other states' plans to protect visibility. Therefore, on May 26, 2016, Georgia submitted a commitment letter to EPA requesting conditional approval of the prong 4 portions of the aforementioned infrastructure SIP revisions. In this letter, Georgia commits to satisfy the prong 4 requirements for the 2008 8-hour ozone NAAQS, 2010 1-hour NO_2 NAAQS, 2010 1-hour SO_2 NAAQS, and 2012 $PM_{2.5}$ NAAQS by providing a SIP revision that adopts provisions for participation in the CSAPR annual NO_X and annual SO_2 trading programs, including annual NO_X and annual SO_2 budgets that are at least as stringent as the budgets codified for Georgia at 40 CFR 97.710(a) (SO_2 Group 2 trading budgets) and 40 CFR 97.410(a) (NO_X Annual trading budgets). Georgia will rely on this SIP revision adopting such budgets to submit a concurrent SIP revision specifically addressing the visibility requirements of prong 4. In its commitment letter, Georgia commits to providing these two concurrent SIP revisions within one year of EPA's final conditional approval of the prong 4 portions of the infrastructure SIP revisions and provides an anticipated schedule for these revisions. If the revised infrastructure SIP revision relies on a fully approvable regional haze SIP, Georgia also commits to providing the necessary regional haze SIP revision to EPA within one year of EPA's final conditional approval.

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[16] CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO_X and SO_2 that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for fine particulates and/or ozone in any downwind state. CAIR imposed specified emissions reduction requirements on each affected State, and established several EPA-administered cap and trade programs for EGUs that States could join as a means to meet these requirements.

[17] *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[18] *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

If Georgia meets its commitment within one year of final conditional approval, the prong 4 portions of the conditionally approved infrastructure SIP submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision(s). However, if the State fails to submit these revisions within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA's final conditional approval and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under CAA section 110(c).

V. Proposed Action

As described above, EPA is proposing to conditionally approve the prong 4 portions of Georgia's March 6, 2012, 8-hour Ozone infrastructure SIP submission; March 25, 2013, 2010 1-hour NO_2 infrastructure SIP submission; October 22, 2013, 2010 1-hour SO_2 infrastructure SIP submission; and December 14, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 22, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–16001 Filed 7–8–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 132
Monday, July 11, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Tribal Relations

Council for Native American Farming and Ranching

AGENCY: Office of Tribal Relations, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of the Council for Native American Farming and Ranching, a public advisory committee of the Office of Tribal Relations. Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2). This will be the third meeting held during fiscal year 2016 and will consist of, but not be limited to: Hearing public comments, update of USDA programs and activities, and discussion of committee priorities. This meeting will be open to the public.

DATES: The meeting will be held on July 27–28, 2016. The meeting will be open to the public on both days with time set aside for public comment on July 27 at approximately 1:30 p.m.–4:00 p.m. The Office of Tribal Relations (OTR) will make the agenda available to the public via the OTR Web site *http://www.usda.gov.tribalrelations* no later than 10 business days before the meeting and at the meeting.

ADDRESSES: The meeting will be held at the Shoshone Bannock Events Center, 777 Bannock Trail, Fort Hall, ID 83202, in the Chief Taghee A Room.

FOR FURTHER INFORMATION CONTACT: Questions or written comments may be submitted to Amanda Burley, Designated Federal Officer, USDA/Office of Tribal Relations, 1400 Independence Ave. SW., Whitten Bldg. 501–A, Washington, DC 20250; by fax: (202) 720–1058; or by email: *tribal.relations@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), USDA established an advisory council for Native American Farmers and Ranchers (CNAFR). The CNAFR is a discretionary advisory committee established under the authority of the Secretary of Agriculture, in furtherance of the *Keepseagle* v. *Vilsack* settlement agreement that was granted final approval by the District Court for the District of Columbia on April 28, 2011.

The CNAFR will operate under the provisions of the FACA and report to the Secretary of Agriculture. The purpose of the CNAFR is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA loan and grant programs; (2) to transmit recommendations concerning any changes to USDA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created by USDA loan and grant programs through enhanced extension and financial literacy services; (4) to examine the methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

Interested persons may present views, orally or in writing, on issues relating to the agenda topics before the CNAFR. Written submissions may be submitted to the Designated Federal Officer on or before July 22, 2016. Oral presentations from the public will be heard approximately 1:30 p.m.–4:00 p.m. on July 27, 2016. Those individuals interested in making formal oral presentations should notify the Designated Federal Officer and submit a brief statement of the general nature of the issues they wish to present and the names and addresses of proposed participants by July 22, 2016. All oral presentations will be given three (3) to five (5) minutes depending on the number of participants.

The OTR will also make the agenda available to the public via the OTR Web site *http://www.usda.gov/tribalrelations* no later than 10 business days before the meeting and at the meeting. The minutes from the meeting will be posted on the OTR Web site. OTR welcomes the attendance of the public at the CNAFR meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amanda Burley at least 10 business days in advance of the meeting.

Dated: July 5, 2016.

Leslie A. Wheelock,

Director, Office of Tribal Relations.

[FR Doc. 2016–16320 Filed 7–8–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet by videoconference in Wrangell, Alaska and Petersburg, Alaska. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. Additional information concerning the Committee can be found by visiting the Committee's Web site at: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwHAAS.*

DATES: The meetings will be held Saturday, July 30, 2016, Saturday, August 20, 2016, and Saturday, September 10, 2016, from 8:00 a.m. to 5:00 p.m. on each day, or until business is concluded.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the Wrangell Ranger District Office, 525 Bennett Street, Wrangell, Alaska, and the Petersburg Ranger District Office, 12 North Nordic Drive in Petersburg, Alaska. Interested persons may attend in person at either location, or by teleconference. For anyone who would like to attend by teleconference, please visit the Committee's Web site listed in the **SUMMARY** section or contact Robert Dalrymple at *rdalrymple@fs.fed.us* or David Zimmerman at *dlzimmerman@fs.fed.us* for further details. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District Office or the Wrangell Ranger District Office, Monday through Friday at 8:00 a.m. to 4:30 p.m. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: David Zimmerman, District Ranger, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833, by phone at (907) 772–3871 or via email at *dlzimmerman@fs.fed.us,* or Robert Dalrymple, District Ranger, Wrangell Ranger District, P.O. Box 51, Wrangell, Alaska 99929, by phone at (907) 874–2323 or via email *rdalrymple@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to:

(1) Review progress of previously funded projects;

(2) Review new project proposals; and

(2) Conclude any business that may be remaining concerning recommendations for allocation of title II funding to projects.

The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by at least one week prior to the meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to David Zimmerman, District Ranger, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833; or Robert Dalrymple, District Ranger, Wrangell Ranger District, P.O. Box 51, Wrangell, Alaska 99929; or by email to *dlzimmerman@fs.fed.us* or via facsimile to (907) 772–5995. Summary/minutes of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 24, 2016.

Robert J. Dalrymple,

District Ranger.

[FR Doc. 2016–16292 Filed 7–8–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Final Damage Assessment and Restoration Plan and Environmental Assessment for the T/B DBL 152 Oil Spill in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of a Final Damage Assessment and Restoration Plan and Environmental Assessment for the T/B DBL 152 Oil Spill in the Gulf of Mexico.

SUMMARY: NOAA, the Natural Resource Trustee for this project (identified below) has prepared a Final Damage Assessment and Restoration Plan and Environmental Assessment (Final DARP/EA) that addresses natural resource injuries and resource service losses resulting from the November 11, 2005 T/B DBL 152 oil spill in the Gulf of Mexico. This Final DARP/EA presents NOAA's assessment of the injuries to natural resources and services and NOAA's final plan to compensate the public for those losses. NOAA's selected restoration alternative is an estuarine shoreline protection and salt marsh restoration project at the Texas Chenier Plain National Wildlife Refuge Complex. NOAA previously provided the public an opportunity to comment on the Draft DARP/EA. The Draft DARP/EA was released on March 18, 2013 and was announced in a press release on NOAA's Web site and in the **Federal Register** (March 18, 2013; 78 FR 16655). NOAA received several comments on the Draft DARP/EA and prepared a response to these comments, described in further detail in the Supplementary Information section below. The full text of the public comments received is provided in Appendix C to the Final DARP/EA, and the response to the comments prepared by NOAA, which includes a summary of changes made to the Draft DARP/EA in response to the comments, is provided in Appendix B of the Final DARP/EA. The purpose of this notice, which is issued under the authority of the Oil Pollution Act (OPA) and the National Environmental Policy Act, is to inform the public of the availability of the Final DARP/EA and of the selected restoration alternative.

ADDRESSES: Requests for copies of the Final DARP/EA should be directed to Kris Benson of NOAA, 4700 Avenue U, Building 307, Galveston, TX 77551, email: *kristopher.benson@noaa.gov.* The Final DARP/EA and the Finding of No Significant Impact (FONSI) are available at: *https://casedocuments.darrp.noaa.gov/southeast/dbl152/admin.html.*

FOR FURTHER INFORMATION CONTACT: Kris Benson of NOAA, 4700 Avenue U, Building 307, Galveston, TX 77551, email: *kristopher.benson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Incident and Response

On November 11, 2005, while en route from Houston, Texas, to Tampa, Florida, the integrated tug-barge unit comprised of the tugboat "*Rebel*" and the double-hull Tank Barge (T/B) DBL 152 struck the submerged remains of a pipeline service platform in the Gulf of Mexico that collapsed during Hurricane Rita. An estimated 45,846 barrels of oil (1,925,532 gallons) were discharged into federal waters of the Gulf of Mexico as a result of this incident, most of which sank to the ocean floor. Of this volume, an estimated 2,355 barrels (98,910 gallons) were recovered by divers. In total, an estimated 43,491 barrels (1,826,622 gallons) of oil remained unrecovered at the time submerged oil cleanup operations were discontinued in January 2006.

Government agencies responded to the incident to supervise and assist in clean-up and begin assessing the impact of the spill on natural resources. Under the federal Oil Pollution Act (OPA), 33 U.S.C. 2701–2761, the National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce, is responsible for restoring natural resources injured by the DBL 152 oil spill with funding from the responsible party (RP) or, where an RP does not exist or exceeds its limit of liability, the Oil Spill Liability Trust Fund (OSLTF) administered by the U.S. Coast Guard (USCG). The measure of damages to natural resources is the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured natural resources, compensation for the diminution in value of those natural resources pending restoration, and the reasonable costs of assessing such damages. 33 U.S.C. 2702(b)(2)(A), 2706(d)(1). All recoveries for the first two elements are to be spent implementing a restoration plan developed by the trustees. 33 U.S.C. 2706(f).

Natural Resource Damage Assessment and Restoration Planning

NOAA, acting as Trustee on the public's behalf, has conducted a natural resource damage assessment (NRDA) to determine the nature and extent of natural resource losses resulting from this incident and the restoration actions needed to restore these losses. The NRDA was conducted using the OPA NRDA regulations found at 15 CFR part 990. On the basis of data provided by the NRDA, NOAA prepared this Final Damage Assessment and Restoration Plan/Environmental Assessment (Final DARP/EA) to consider restoration alternatives and identify a selected alternative.

An injury assessment conducted by NOAA determined that the primary injury resulting from this incident was to offshore benthic habitat. This conclusion is described in greater detail in the Final DARP/EA.

NOAA considered various restoration alternatives to compensate the public for spill-related injuries and to restore comparable natural resource services to those that were provided by the resources injured by the spill. The selected restoration alternative identified by NOAA is an estuarine shoreline protection and salt marsh restoration project at the Texas Chenier Plain National Wildlife Refuge Complex. The project area is located in Galveston Bay, Texas. The project is designed to protect shoreline with a protective structure consisting of rip-rap habitat. The project will be designed so that salt marsh habitat will be created behind the breakwater. Prior to implementation, the project will undergo pre-project engineering to design the shoreline protection structure and the marsh.

The U.S. Coast Guard (USCG) has determined that the RP has exceeded its limit of liability under OPA. Therefore, the Final DARP/EA will be submitted to the Oil Spill Liability Trust Fund (OSLTF) as part of a claim for funds to implement the selected restoration project. The OSLTF is administered by the USCG and is maintained through fees paid by industry.

Public Comments and NOAA's Response

NOAA prepared the Final DARP/EA after consideration of the public's response to the Draft DARP/EA. One of the comments received was supportive of the restoration project alternatives. Other comments received asked for clarity on various points in the Draft DARP/EA and the NRDA process, questioned various aspects of the NRDA for this site, questioned the appropriateness of the selected project to the specific injury, or requested additional evaluation or monitoring by NOAA. The full text of the public comments received is provided in Appendix C to the Final DARP/EA, and NOAA's full response to the comments received, along with a discussion of changes made to the DARP/EA in response to the comments, is provided in Appendix B to the Final DARP/EA.

A brief summary of the changes made to the DARP/EA in response to the comments is as follows:

- A paragraph on overlapping impacts of the DBL 152 oil spill and the 2010 Deepwater Horizon Oil Spill was revised in Section 4 of the Final DARP/EA.
- A discussion was added to Section 6 of the Final DARP/EA regarding a candidate project proposed by the Louisiana Oil Spill Coordinator's Office (LOSCO) on behalf of the Louisiana Oil Spill Natural Resource Trustees.
- Clarifying language was added to Section 3 of the Final DARP/EA regarding potential injuries to water column species.

Administrative Record

Pursuant to the OPA NRDA regulations, NOAA has developed an Administrative Record to support its restoration planning decisions and inform the public of the basis of their decisions. Information and documents, including public comments received on the Draft DARP/EA, the Final DARP/EA, and other related restoration planning documents, are also part of the Administrative Record. The documents comprising the public record (Administrative Record) can be viewed at *https://casedocuments.darrp.noaa.gov/southeast/dbl152/admin.html.*

Dated: June 3, 2016.

David Westerholm,

Director, Office of Response and Restoration.

[FR Doc. 2016–16357 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–13–2016]

Foreign-Trade Zone (FTZ) 141—Monroe County, New York; Authorization of Proposed Production Activity; Xerox Corporation; Subzone 141B (Bulk Xerographic Toner, Toner Cartridges and Photoreceptors); Webster, New York

On March 7, 2016, the County of Monroe, New York, grantee of FTZ 141, submitted a notification of proposed production activity to the FTZ Board on behalf of Xerox Corporation (Xerox) located within Subzone 141B in Webster, New York.

The notification (updated on April 26, 2016) was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 14834, March 18, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the updated notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: July 5, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–16375 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Business Directory Survey

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Opportunity to participate in the RE3 App.

SUMMARY: The U.S. Departments of State, Commerce, and Energy (the "Interagency Team") announce an opportunity for U.S.-based suppliers and providers of clean energy, smart grid, and energy efficiency solutions to participate in an interactive directory of renewable energy and energy efficiency solutions. The Interagency Team has

developed the beta version of an interactive app to serve as a mobile business directory for U.S. clean energy exporters, which can be accessed at *http://www.re3app.com/.* The app highlights deployments of sustainable technologies and systems at U.S. diplomatic missions and provides potential business partners around the world with a searchable interface to find information on potential U.S. technology and service providers. The app showcases a diverse array of clean energy goods and services, including renewable energy equipment (solar, wind, geothermal), biofuels, fuel cell power, smart grid technologies, and energy efficiency solutions, as well as U.S.-based services critical to the deployment of clean energy supplies. The app is expected to be available in mobile app stores around October 1, 2016. U.S. clean energy and energy efficiency exporters interested in registering to be part of the interactive directory and provide information on their company's solutions to be included in the app are requested to complete the online survey by no later than August 1, 2016. The app and survey are administered by the U.S. Department of State. The U.S. Department of Commerce is publishing this notice as part of its responsibility for public outreach for the directory.

Who will use the app?

Target users include Foreign Service Officers and Foreign Commercial Service Officers and their energy sector stakeholders in international markets. The app will enable users to easily demonstrate U.S. clean energy and energy efficiency solutions available in foreign markets and provide a tool to facilitate commercial partnerships that drive the deployment of U.S. technologies and services globally. Through the app, a global audience, as well as the American public, will be invited to learn more about environmental diplomacy efforts overseas, and the innovative U.S. companies powering them.

Disclaimer

The information submitted to the directory and displayed on the app is intended to inform users about U.S. clean energy and energy efficiency solutions. All U.S.-based businesses in these industries that meet the criteria specified in the online form will be eligible for the directory and app. The Interagency Team will perform due diligence on submissions to the Directory and expects that parties will perform their own due diligence, investigation, and background research before entering into a commercial relationship with any listed business or business contact facilitated through the product. A listing in the directory does not constitute endorsement of the business or its products, services or technology by the Interagency Team. The Interagency Team assumes no responsibility or liability for the actions users may take based on the information provided and reserves the right not to list any particular business.

ADDRESSES: To provide information for use in the app, U.S. companies are requested to complete the online survey by no later than August 1, 2016. The URL for the survey: *http://fluidsurveys.com/s/re3app/.*

FOR FURTHER INFORMATION CONTACT: Helaina Matza, Office of Innovation and Eco-Diplomacy, United States Department of State; 202.647.0716; *sustainability@state.gov;* or Cora Dickson, Office of Energy and Environmental Industries, United States Department of Commerce; 202–482–6083; *reee@trade.gov.*

Man Cho,

Acting Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–16257 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–13A001]

Export Trade Certificate of Review

ACTION: Notice of Application to amend the Export Trade Certificate of Review issued to Aerospace Industries Association of America, Inc., Application No. 92–13A001.

SUMMARY: The Office of Trade and Economic Analysis ("OTEA") of the International Trade Administration, Department of Commerce, received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 92–13A001."

The Aerospace Industries Association of America Inc. ("AIA") original Certificate was issued on September 8, 1992 (57 FR 41920, September 14, 1992). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc. ("AIA"), 1000 Wilson Boulevard, Suite 1700, Arlington, VA 22209.

Contact: Matthew F. Hall, Attorney, Telephone: (202) 862–9700.

Application No.: 92–13A001.

Date Deemed Submitted: June 27, 2016.

Proposed Amendment: AIA seeks to amend its Certificate to:

1. Add the following companies as new Members of the Certificate within

the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- Accurus Aerospace Corporation, LLC; Irving, TX
- Aerion Corporation; Reno, NV
- Aerospace Exports Incorporated; Moreno, CA
- AirMap; Santa Monica, CA
- Apex International Management Company; Daytona Beach, FL
- Ascent Manufacturing Inc.; Elk Grove Village, IL
- Astronautics Corporation of America; Milwaukee, WI
- Astronics Corporation; East Aurora, NY
- Boston Consulting Group; Boston, MA
- C4 Associates, Inc.; Los Angeles, CA
- CAE USA; Tampa, FL (controlling entity CAE; St. Laurent, Quebec, Canada)
- Capgemini; New York, NY (controlling entity Capgemini, S.A.; Paris, France)
- CDI Corporation; Philadelphia, PA
- Cytec Industries, Inc.; Woodland Park, NJ (controlling entity Solvay SA; Brussels, Belgium)
- Facebook, Inc.; Menlo Park, CA
- FS Precision Tech, Co. LLC; Compton, CA
- FLIR Systems, Inc.; Wilsonville, OR
- Iron Mountain, Inc.; Boston, MA
- J Anthony Group, LLC; Fort Worth, TX
- Kratos Defense & Security Solutions, Inc.; San Diego, CA
- Lavi Systems, Inc.; Van Nuys, CA
- Leidos, Inc.; Reston, VA (controlling entity Leidos Holdings, Inc.; Reston, VA)
- LS Technologies, LLC; Fairfax, VA
- Momentum Aviation Group; Woodbridge, VA
- Pacific Design Technologies; Goleta, CA
- Park-Ohio Holdings Corp.; Cleveland, OH
- Primus Technologies Corporation; Williamsport, PA
- salesforce.com, inc.; San Francisco, CA
- Spacecraft Components Corporation; Las Vegas, NV
- Sunflower Systems; Arlington, VA
- The NORDAM Group, Inc.; Tulsa, OK
- Tip Technologies; Waukesha, WI
- TriMas Aerospace; Los Angeles, CA (controlling entity TriMas Corporation; Bloomfield Hills, MI)
- United Parcel Service of America, Inc.; Atlanta, GA
- Universal Protection Services; Santa Ana, CA (controlling entity Universal Services of America; Santa Ana, CA)
- Verify, Inc.; Irvine, CA
- Verizon Enterprise Solutions; Basking Ridge, NJ (controlling entity Verizon Communications, Inc., New York, NY)
- VogelHood; Washington, DC
- Xerox; Norwalk, CT

2. Delete the following companies as Members of AIA's Certificate:

- Aero Mechanical Industries, Inc.
- Align Aerospace, LLC
- Allfast Fastening Systems
- Alliant Techsystems, Inc.
- AlliedBarton Security Services, LLC
- AMT II Corporation
- ARINC Aerospace
- B/E Aerospace, Inc.
- BRS Aerospace
- CERTON Software, Inc.
- Chromalloy
- Colt Defense, LLC
- Deltek, Inc.
- DigitalGlobe, Inc.
- ENSCO, Inc.
- Erikson Air Crane Inc.
- ESI North America
- ESIS, Inc.
- Exelis, Inc.
- Galaxy Technologies
- General Atomics Aeronautical Systems, Inc.
- Groen Brothers Aviation Global, Inc.
- Guardsmark LLC
- Hi Shear Technology Corporation
- HITCO Carbon Composites, Inc.
- Hydra Electric Company
- IEC Electronics Corporation
- Kemet Electronics Corporation
- NobleTek
- Ontic Engineering and Manufacturing, Inc.
- Oracle USA, Inc.
- Pall Aeropower Corporation
- Parametric Technology Corporation
- Pinkerton Government Services, Inc.
- RAF Tabtronics LLC
- RTI International Metals, Inc.
- Sila Solutions Group
- Satair USA Inc.
- Science Applications International Corporation
- Space Exploration Technologies Corporation
- SRA International, Inc.
- TASC, Inc.
- Timken Aerospace Transmissions, LLC

3. Change in name or address for the following Members:

- AAR Manufacturing, Inc. of Wood Dale, IL, is now named AAR Corp.
- Aerojet, of Rancho Cordova, CA, is now named Aerojet Rocketdyne. The controlling entity is Aerojet Rocketdyne Holdings, Inc., Rancho Cordova, CA.
- AGC Aerospace Defense of Oklahoma City, OK, is now named AGC Aerospace & Defense. The controlling entity is Acorn Growth Companies, Oklahoma City, OK.
- Celestica Corporation of Toronto, Canada is now named Celestica Inc.
- Infotech Enterprises America Inc., of East Hartford, CT, is now named Cyient, Inc. The controlling entity and AIA member is Cyient, Ltd. of Hyderabad, India.
- Natel Engineering Co. Inc. of Chatsworth, CA is now named NEO Tech.
- Pacifica Engineering, Inc. of Mukiliteo, WA is now named MTorres America of Bothell, WA. The controlling entity is M.TORRES DISENOS INDUSTRIALES, SAU of Torres de Elorz (Navarra) Spain.
- Pinkerton Government Services Inc. of Springfield, VA is now Securitas Critical Infrastructure Services, Inc.

AIA's proposed amendment of its Export Trade Certificate of Review would result in the following membership list:

- 3M Company; St. Paul, MN
- AAR Corp.; Wood Dale, IL
- Accenture; Chicago, IL
- Accurus Aerospace Corporation, LLC; Irving, TX
- Acutec Precision Machining, Inc.; Saegertown, PA
- Aerion Corporation; Reno, NV
- Aero-Mark, LLC; Ontario, CA
- Aerojet Rocketdyne; Rancho Cordova, CA
- Aerospace Exports Incorporated; Moreno, CA
- AGC Aerospace & Defense; Oklahoma City, OK
- Aireon LLC; McLean, VA
- AirMap; Santa Monica, CA
- Alcoa Defense; Crystal City, VA
- Allied Telesis, Inc.; Bothell, WA
- American Pacific Corporation; Las Vegas, NV
- Analytical Graphics, Inc.; Exton, PA
- Apex International Management Company; Daytona Beach, FL
- Ascent Manufacturing Inc.; Elk Grove Village, IL
- Astronautics Corporation of America; Milwaukee, WI
- Astronics Corporation: East Aurora, NY
- Aurora Flight Sciences Corporation; Manassas, VA
- AUSCO, Inc.; Port Washington, NY
- Avascent; Washington, DC
- B&E Group, LLC; Southwick, MA
- BAE Systems, Inc.; Rockville, MD
- Ball Aerospace & Technologies Corp.; Boulder, CO
- Barnes Group Inc.; Bristol, CT
- Belcan Corporation; Cincinnati, OH
- Benchmark Electronics, Inc.; Angleton, TX
- Bombardier; Montreal, Canada
- Boston Consulting Group; Boston, MA
- C4 Associates, Inc.; Los Angeles, CA
- CADENAS PARTsolutions, LLC; Cincinnati, OH

- CAE USA; Tampa, FL
- Camcode Division of Horizons, Inc.; Cleveland, OH
- Capgemini; New York, NY
- Castle Metals; Oak Brook, IL
- CDI Corporation; Philadelphia, PA
- Celestica Inc.; Toronto, Canada
- Click Bond, Inc.; Carson City, NV
- Cobham; Arlington, VA
- Computer Sciences Corporation; Falls Church, VA
- CPI Aerostructures, Inc.; Edgewood, NY
- Crane Aerospace & Electronics; Lynnwood, WA
- Cubic Corporation, Inc.; San Diego, CA
- Curtiss-Wright Corporation; Parsippany, NJ
- Cyient Ltd.; East Hartford, CT
- Cytec Industries, Inc.; Woodland Park, NJ
- Deloitte Consulting LLP; New York, NY
- Denison Industries, Inc.; Denison, TX
- Ducommun Incorporated; Carson, CA
- DuPont Company; New Castle, DE
- Eaton Corporation; Cleveland, OH
- Elbit Systems of America, LLC; Fort Worth, TX
- Embraer Aircraft Holding Inc.; Fort Lauderdale, FL
- EPS Corporation; Tinton Falls, NJ
- Ernst & Young LLP; New York, NY
- Esterline Technologies; Bellevue, WA
- Exostar LLC; Herndon, VA
- Facebook, Inc.; Menlo Park, CA
- Flextronics International USA; San Jose, CA
- Flight Safety International Inc.; Flushing, NY
- FLIR Systems, Inc.; Wilsonville, OR
- Fluor Corporation; Irving, TX
- FS Precision Tech, Co. LLC; Compton, CA
- FTG Circuits, Inc.; Chatsworth, CA
- General Dynamics Corporation; Falls Church, VA
- General Electric Aviation; Cincinnati, OH
- GKN Aerospace North America; Irving, TX
- Harris Corporation; Melbourne, FL
- HCL America Inc.; Sunnyvale, CA
- HEICO Corporation; Hollywood, FL
- Hexcel Corporation; Stamford, CT
- Honeywell Aerospace; Phoenix, AZ
- HP Enterprise Services—Aerospace; Palo Alto, CA
- Huntington Ingalls Industries, Inc.; Newport News, VA
- IBM Corporation; Armonk, NY
- Iron Mountain, Inc.; Boston, MA
- J Anthony Group, LLC; Fort Worth, TX
- Jabil Defense & Aerospace Services LLC; St. Petersburg, FL
- Kaman Aerospace Corporation; Bloomfield, CT
- KPMG LLP; New York, NY
- Kratos Defense & Security Solutions, Inc.; San Diego, CA
- L–3 Communications Corporation; New York, NY
- LAI International, Inc.; Scottsdale, AZ
- Lavi Systems, Inc.; Van Nuys, CA
- Leidos, Inc.; Reston, VA
- LMI Aerospace Inc.; St. Charles, MO
- Lockheed Martin Corporation; Bethesda, MD
- Lord Corporation; Cary, NC
- LS Technologies, LLC; Fairfax, VA
- Momentum Aviation Group; Woodbridge, VA
- Marotta Controls, Inc.; Montville, NJ
- Meggitt-USA, Inc.; Simi, CA
- Micro-Coax, Inc.; Pottstown, PA
- Microsemi Corporation; Aliso Viejo, CA
- MOOG Inc.; East Aurora, NY
- MTorres America; Bothell, WA
- National Technical Systems, Inc.; Calabasas, CA
- NEO Tech.; Chatsworth, CA
- Northrop Grumman Corporation; Los Angeles, CA
- NYLOK, LLC; Macomb, MI
- O'Neil & Associates, Inc.; Miamisburg, OH
- Oxford Performance Materials; South Windsor, CT
- Pacific Design Technologies; Goleta, CA
- Park-Ohio Holdings Corp.; Cleveland, OH
- Parker Aerospace; Irvine, CA
- Plexus Corporation; Neenah, WI
- PPG Aerospace-Sierracin Corporation; Sylmar, CA
- Primus Technologies Corporation; Williamsport, PA
- PWC Aerospace & Defense Advisory Services; McLean, VA
- Raytheon Company; Waltham, MA
- Rhinestahl Corporation; Mason, OH
- Rix Industries; Benecia, CA
- Rockwell Collins; Cedar Rapids, IA
- Rolls-Royce North America Inc.; Reston, VA
- salesforce.com, inc.; San Francisco, CA
- SAP America, Inc.; Newtown Square, PA
- SCB Training, Inc.; Santa Fe Springs, CA
- Seal Science, Inc.; Irvine, CA
- Securitas Critical Infrastructure Services, Inc.; Springfield, VA
- Siemens PLM Software; Plano, TX
- Sierra Nevada Corporation, Space Systems; Littleton, CO
- SIFCO Industries, Inc.; Cleveland, OH
- SITA; Atlanta, GA
- Spacecraft Components Corporation; Las Vegas, NV
- Sparton Corporation; Schaumburg, IL
- Spirit AeroSystems; Wichita, KS
- Sunflower Systems; Arlington, VA
- Tech Manufacturing, LLC; Wright City, MO
- Textron Inc.; Providence, RI
- The Boeing Company; Chicago, IL
- The NORDAM Group, Inc.; Tulsa, OK
- The Padina Group, Inc.; Lancaster, PA
- Therm, Incorporated; Ithaca, NY
- Tip Technologies; Waukesha, WI
- TriMas Aerospace; Los Angeles, CA
- Triumph Group, Inc.; Wayne, PA
- United Parcel Service of America, Inc.; Atlanta, GA
- United Technologies Corporation; Hartford, CT
- Universal Protection Services; Santa Ana, CA
- Verify, Inc.; Irvine, CA
- Verizon Enterprise Solutions; Basking Ridge, NJ
- Virgin Galactic, LLC; Las Cruces, NM
- VogelHood; Washington, DC
- Wesco Aircraft Hardware Corporation; Valencia, CA
- Woodward, Inc.; Fort Collins, CO
- Xerox; Norwalk, CT

Dated: July 5, 2016.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2016–16293 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–018]

Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination and Notice of Amended Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 22, 2016, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") final results of redetermination pursuant to remand of the final determination in the antidumping duty investigation of boltless steel shelving units from the PRC.[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC

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[1] *See* Final Results of Redetermination Pursuant To Court Remand issued by the Department of Commerce (May 27, 2016), available at *http://enforcement.trade.gov/remands/15-00298.pdf* ("Final Remand Results").

2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Determination* and is amending the *Final Determination* of the antidumping duty investigation of boltless steel shelving units from the People's Republic of China ("PRC") with respect to the countervailing duty export subsidy adjustments applied to the cash deposit rates calculated for the *Final Determination.*[2]

DATES: *Effective Date:* July 5, 2016.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION: On April 19, 2016, the CIT remanded this case to the Department, based on a request for voluntary remand, to reconsider the amount of the export subsidy adjustments used to calculate cash deposit rates for respondents.[3] Pursuant to the Final Remand Results, we reconsidered our export subsidy adjustments, as applied in the *Final Determination,* and revised our *Final Determination* cash deposit calculations, adjusted for export subsidies, in accordance with the established policy and practice articulated in *Drawn Stainless Steel Sinks from the People's Republic of China: Antidumping Duty Investigation,* 77 FR 60673 (October 4, 2012) ("*PRC Sinks*"). The CIT sustained the Department's Final Remand Results on June 22, 2016, making the effective date of this notice July 5, 2016.

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 22, 2016, judgment sustaining the Department's Final Remand Results constitutes a final decision of that court that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision, we are amending the *Final Determination* with respect to the amount of the export subsidy adjustments applied to the calculated cash deposit rates, in accordance with the Final Remand Results. Based on our applied practice in *PRC Sinks,* the proper adjustments to the AD cash deposits in the *Final Determination* of this investigation, as noted in the Final Remand Results, are as follows:

(1) For Zhongda United Holding Group Co., Ltd. ("Zhongda"), we reduced the AD cash deposit rate by the simple average of the export subsidy rates determined for the mandatory respondents in the companion CVD investigation. This adjustment is: 17.55 percent minus 0.02 percent,[4] resulting in an adjusted AD cash deposit rate of 17.53 percent;

(2) For the other producer/exporter combinations receiving a separate rate we also reduced the AD cash deposit rate, which is based on the 17.55 percent calculated rate for Zhongda, by the simple average of the export subsidy rates determined for the mandatory respondents in the companion CVD investigation. This adjustment is: 17.55 percent minus 0.02 percent,[5] percent resulting in an adjusted AD cash deposit rate of 17.53 percent; and

(3) For the PRC-wide entity (including Nanjing Topsun Racking Manufacturing Co., Ltd.), which received an adverse facts available rate based on information contained in the Petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, which was 0.00 percent. Accordingly, the AD cash deposit rate of 112.68 percent is not adjusted, as an extension of the adverse inference found necessary under section 776(b) of the Act.

In the event the CIT's ruling is not appealed, the Department will instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the *Final Determination,* adjusted where appropriate for the export subsidies noted above.[6] These instructions suspending liquidation will remain in effect until further notice.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Ralph K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–16443 Filed 7–7–16; 4:15 pm]

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[2] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 80 FR 51779 (August 26, 2015) ("*Final Determination*").

[3] *See Edsal Manufacturing Co., Inc.,* v. *United States,* Court No. 15–00298 (April 18, 2016) ("Remand Opinion and Order").

[4] In the companion countervailing duty ("CVD") investigation, Zhongda was not a mandatory respondent and received the calculated "all-others" export subsidy rate of 0.02 percent, which should be used to adjust Zhongda's calculated AD cash deposit rate. *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 80 FR 51775 (August 26, 2015) ("*CVD Final*") and accompanying Issues and Decision Memorandum at 18–22. In the *CVD Final,* the export subsidy rates determined for the mandatory respondents was 0.00 percent and 0.04 percent, the simple average of which is 0.02 percent.

[5] *Id.*

[6] *See also* Final Remand Results (describing the adjustments to the AD duty margins in more detail); *see also* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE718

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Electronic Monitoring Workgroup (EMWG) will hold a public meeting on July 26, 2016.

DATES: The meeting will be at 1 p.m. on Tuesday, July 26, 2016, and end at 5 p.m. on Thursday, July 28, 2016, to view the agenda, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held in the Susitna Room, at The Coast International Inn, 3450 Aviation Avenue., Anchorage, Alaska 99502.

Teleconference number is (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, July 26, 2016 Through Thursday, July 28, 2016

The agenda will include an update on the 2016 pre-implementation program, briefing on Northeast and West coast EM (electronic monitoring) programs, review of draft EM analysis, development of the 2017 pre-implementation plan, and other business and scheduling. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason, at (907) 271–2809, at least 7 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–16308 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE722

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a joint meeting of the Law Enforcement Advisory Panel and Law Enforcement Committee.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Law Enforcement Advisory Panel and Law Enforcement Committee will meet jointly to address issues pertaining to enforcement of fisheries regulations in the South Atlantic Region.

DATES: The joint meeting will take place on August 4–5, 2016. The meeting will begin at 1:30 p.m. on August 4 and conclude at 3 p.m. on August 5. The joint meeting will be broadcast via webinar. Registration information will be posted on the SAFMC Web site at *www.safmc.net* as it becomes available.

ADDRESSES: The joint meeting will be held at the Crowne Plaza hotel; 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; phone: (843) 744–4422; fax: (843) 744–4472.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council's Law Enforcement Advisory Panel and Law Enforcement Committee will meet jointly to address several items including proper stowage of spearfishing gear for vessels transiting through closed areas, enhancing compliance with future reporting requirements for for-hire vessels, utility of Operator Cards, enforcement of newly implemented regulations regarding transport of fillets from The Bahamas, Joint Enforcement Agreement (JEA) activities, and inclusion of Council's managed areas (*i.e.,* Marine Protected Areas, Spawning Special Management Zones) in navigation charts. Meeting participants will also receive a presentation on a marine managed areas mapping project.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–16356 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2016–0012]

Post-Prosecution Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; request for comment.

SUMMARY: The United States Patent and Trademark Office (Office) is initiating a Post-Prosecution Pilot Program (P3) to test its impact on enhancing patent practice during the period subsequent to a final rejection and prior to the filing of a notice of appeal. This Pilot Program responds to stakeholder input gathered during public forums held in support of the Enhanced Patent Quality Initiative. Under the P3, a panel of examiners, including the examiner of record, will hold a conference with the applicant to review the applicant's response to the final rejection of record. In order to participate in the P3, the applicant will be required to file a request for consideration under the P3 within two months from the mailing date of a final rejection and prior to filing a notice of appeal, together with a response to the final rejection and a statement that the applicant is willing and available to participate in the conference. The applicant will have the option of including in the response a proposed non-broadening amendment to a claim(s). The Office designed the P3 to increase the value of after final practice by (1) leveraging applicant input obtained through an oral presentation during a conference with a panel of examiners, and (2) also providing written explanation for the panel decision. The P3 is also designed to reduce the number of appeals and issues to be taken up on appeal to the Patent Trial and Appeal Board (PTAB), and reduce the number of Requests for Continued Examination (RCE), and simplify the after final landscape. This notice identifies requirements and procedures of the P3, which will govern entry into, and practice under, the P3. This notice also solicits public comments on the P3 and other suggestions to improve after final practice and reduce the number of both appeals to the PTAB and RCEs.

DATES: *Effective Date:* July 11, 2016.

Duration: The P3 will accept requests beginning July 11, 2016, until either January 12, 2017, or the date the Office accepts a total (collectively across all technology centers) of 1,600 compliant requests to participate under the P3, whichever occurs first. Each individual technology center will accept no more than 200 compliant requests, meaning that the P3 may close with respect to an individual technology center that has accepted 200 compliant requests, even as it continues to run in other technology centers that have yet to accept 200 compliant requests.

Comment Deadline Date: Written comments must be received on or before November 14, 2016.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *afterfinalpractice@uspto.gov.* Comments may also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Office of Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo. Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet in order to facilitate posting on the Office's Internet Web site.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located at Madison Building East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor (telephone (571) 272–7728; electronic mail message (*raul.tamayo@uspto.gov*)), Kery Fries, Senior Legal Advisor (telephone (571) 272–7757; electronic mail message (*kery.fries@uspto.gov*)), or Jeffrey West, Legal Advisor (telephone (571) 272–2226; electronic mail message (*jeffrey.west@uspto.gov*)). Alternatively, mail may be addressed to Raul Tamayo, Office of Commissioner for Patents, Attn: Post-Prosecution Pilot Program, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION:

I. Background

Since 2005, the Office has administered the Pre-Appeal Brief Conference Pilot Program (Pre-Appeal program), which provides an avenue for a patent applicant to request a review of the basis of a rejection(s) in a patent application prior to the filing of an appeal brief. *See New Pre-Appeal Brief Conference Pilot Program,* 1296 *Off. Gaz. Pat. Office* 67 (July 12, 2005). Specifically, when an applicant files a notice of appeal together with a request to participate in the Pre-Appeal program, a panel of examiners (including the examiner of record) formally reviews the rejections of record in light of the remarks provided in the request. The Pre-Appeal program benefits both the applicant and the Office. For example, if the panel's review determines that the application is not in condition for appeal, the applicant can save the time and expense of preparing an appeal brief, and the Office can save resources associated with an appeal to the PTAB.

Since 2013, the Office has administered the After Final Consideration Pilot Program 2.0 (AFCP 2.0). *See After Final Consideration Pilot Program 2.0,* 78 FR 29117 (May 17, 2013). Under AFCP 2.0, examiners consider a response filed after a final rejection pursuant to 37 CFR 1.116 that includes remarks and amendments that may require further search and consideration, provided that at least one independent claim includes a non-broadening amendment. The examiner also may conduct an interview with the applicant when the response does not place the application in condition for allowance. A goal of AFCP 2.0 is to reduce pendency by reducing the number of RCEs and encouraging increased collaboration between the applicant and the examiner to effectively advance the prosecution of the application.

The P3 program implemented through this notice combines effective features from the Pre-Appeal and AFCP 2.0 programs with new features. For example, the P3 provides for (i) an after final response to be considered by a panel of examiners (Pre-Appeal), (ii) an after final response to include an optional proposed amendment (AFCP 2.0), and (iii) an opportunity for the applicant to make an oral presentation to the panel of examiners (new). Finally, the panel decision will be communicated in the form of a brief written summary. Section II of this notice provides a more complete identification of the requirements and procedures of the P3. This notice does not discontinue either the Pre-Appeal or AFCP 2.0 pilot programs.

II. P3 Participation Requirements and Procedures

A. P3 Participation Requirements

To be eligible to participate in the P3, an application must contain an outstanding final rejection and be (i) an original utility non-provisional application filed under 35 U.S.C. 111(a), or (ii) an international utility application that has entered the national stage in compliance with 35 U.S.C. 371 (see 37 CFR 1.491). A continuing application (*e.g.,* a continuation or divisional application) is filed under 35 U.S.C. 111(a) and is thus eligible to participate in the P3. Reissue, design, and plant applications, as well as reexamination proceedings, are not eligible to participate in the P3.

A request for a response under 37 CFR 1.116 to be considered under the P3 must include the following items: (1) A transmittal form, such as form PTO/SB/444, that identifies the submission as a P3 submission and requests consideration under the P3; (2) a response under 37 CFR 1.116 comprising no more than five pages of argument; and (3) a statement that the applicant is willing and available to participate in the conference with the panel of examiners. Optionally, a P3 request may include a proposed non-broadening amendment to a claim(s).

Only one P3 request will be accepted in response to an outstanding final rejection. If prosecution is reopened and the Office subsequently issues a new final rejection, the filing of a P3 request in response to the new final rejection is permitted. Once a P3 request has been accepted in response to a final rejection, no additional response under 37 CFR 1.116 to the same final rejection will be entered, unless the examiner has requested the additional response because the examiner agrees that it would place the application in condition for allowance.

There is no fee required to request consideration under the P3. All papers associated with a P3 request must be filed via the USPTO's Electronic Filing System-Web (EFS-Web).

To be eligible to participate in the P3, an applicant cannot have previously filed a proper request to participate in the Pre-Appeal program or a proper request under AFCP 2.0 in response to the same outstanding final rejection, and once a P3 request is accepted, neither a request to participate in the Pre-Appeal program nor a request for consideration under AFCP 2.0 will be accepted for the same outstanding final rejection.

1. Timing of the P3 Request

A P3 request must be filed within two months from the mailing date of a final rejection and prior to filing a notice of appeal. A P3 request will be deemed untimely if it is filed (i) more than two months from the mailing date of the final rejection, (ii) in an application that does not contain an outstanding final rejection (*e.g.,* a P3 request will not be accepted in response to a second action non-final rejection), (iii) in response to a final rejection for which a proper AFCP 2.0 request has been filed, (iv) on or after the date a RCE or notice of appeal is filed in response to the same outstanding rejection, or (v) on or after the date an express abandonment is filed. For information on how the Office will process an untimely P3 request, refer to Section II.B.1 of this notice. For information on how a P3 request will be treated if a RCE, notice of appeal, or express abandonment is filed subsequent to the filing of the P3 request, but prior to a decision on the P3 request, refer to Section II.B.4 of this notice.

2. Transmittal Form

A P3 request must include a transmittal form. The Office advises the use of form PTO/SB/444, which is available at *http://www.uspto.gov/forms/index.jsp,* as the transmittal form. Use of form PTO/SB/444 will help the Office to quickly identify P3 requests and facilitate timely processing. In addition, form PTO/SB/444 will help applicants understand and comply with the requirements and procedures of the P3. Under 5 CFR 1320.3(h), form PTO/SB/444 does not collect "information" within the meaning of the Paperwork Reduction Act of 1995.

3. Response Under 37 CFR 1.116

A P3 request must include a response under 37 CFR 1.116. The response must be a separate paper from the transmittal form, and must comprise no more than five pages of arguments. Arguments are limited to appealable, not petitionable, matters (*e.g.,* an argument that the final rejection was premature is a petitionable matter—see MPEP § 706.07(c)). The Office considers arguments as encompassing, *e.g.,* conclusions, definitions, claim charts, and diagrams. If the applicant opts to include a proposed amendment in the response under 37 CFR 1.116, as further discussed at Section II.A.5 of this notice, arguments presented in the response may be directed to the patentability of the proposed amended claim(s). The sheet(s) of the response containing a proposed amendment will not count towards the five-page limit. If the applicant opts to include an affidavit or other evidence as part of the response, entry of the affidavit or other evidence will be governed by 37 CFR 1.116. See MPEP 714.12. In addition, the affidavit or other evidence will count towards the limit of no more than five pages of arguments.

Form PTO/SB/444, or an equivalent transmittal that does not include arguments, will not count towards the five-page limit. Additionally, a page of the response that consists solely of, for example, a signature will not be counted toward the five-page limit. Thus, for example, a response that includes five pages of arguments and a sixth page that includes conclusions and/or definitions would be treated as exceeding the five-page limit. Furthermore, an applicant may not circumvent the five-page limit by filing arguments in multiple separate documents. For example, if an applicant files one document containing five pages of arguments and an additional document containing arguments, the two documents will be considered together to ascertain whether the five-page limit has been exceeded.

The response may be single spaced, but must comply with the requirements of 37 CFR 1.52(a). Additionally, the response may refer to an argument already of record rather than repeat the argument. This should be done by referring to the location of the argument in a prior submission and identifying the prior submission by title and/or date (*e.g.,* see the argument at pages 4–6 of the paper titled "Applicant's Response to Final Office Action" filed on October 1, 2015). A reference to "the arguments of record" or "the paper dated X" without a pinpoint citation will not be considered under the P3.

4. Conference Participation Statement

The P3 request must include a statement by the applicant that the applicant is willing and available to participate in the conference with the panel of examiners. Form PTO/SB/444 includes the required conference participation statement.

After the Office initially verifies that a P3 request is timely and compliant, as further discussed at Section II.B.1 of this notice, the Office will contact the applicant to schedule the conference. If within ten calendar days from the date the Office first contacts the applicant, the Office and the applicant are unable to agree on a time to hold the conference, or the applicant declines to participate in the conference, the request will be deemed improper and treated in accordance with the discussion at Section II.B.1 of this notice.

The applicant may participate in the conference in-person, by telephone, or by a video conferencing tool set up by the Office, such as WebEx®. The conference will permit the applicant to present to the panel of examiners in a manner similar to how an applicant presents an argument in an *ex parte* appeal before the PTAB. The applicant's participation in the conference will be limited to 20 minutes.

The applicant should advise the Office of any special needs as soon as possible before participating in a conference. Examples of such needs include an easel for posters or a projector. The applicant should not make assumptions about the equipment the Office may have on hand for the conference. Section II.B.2 of this notice provides more information regarding the applicant's participation in the conference.

5. Option To Propose Amendment

The response under 37 CFR 1.116 included with a P3 request optionally may include a proposed amendment to a claim(s). Entry of any proposed amendment after a final Office action is governed by 37 CFR 1.116. See MPEP 714.12. In addition, a proposed amendment under the P3 may not broaden the scope of a claim in any aspect. For the purposes of the P3, the analysis of whether a proposed amendment to a claim impermissibly would broaden the scope of the claim will be analogous to the guidance set forth in section 1412.03 of the MPEP for determining whether a reissue claim has been broadened.

A proposed amendment that focuses the issues with respect to a single independent claim is the type of proposed amendment that provides the best opportunity for leading to the application being placed into condition for allowance. A proposed amendment that contains extensive amendments (either in terms of the nature of the amendment or number of claims to be amended) probably will require extensive further consideration and thus likely would not be effective to place the application in condition for allowance. Extensive amendments will be considered only to the extent possible under the time allotted to the examiner under the P3.

The sheet(s) of the response containing a proposed amendment will not count towards the five-page limit discussed at Section II.A.3 of this notice. In accordance with 37 CFR 1.121(c)(1), the sheet(s) of the response containing the proposed amendment may not contain arguments.

B. P3 Procedures

1. Technology Center Review

After receipt of a P3 request, the relevant technology center will review the request to verify that it is timely, includes a transmittal form, a response under 37 CFR 1.116 comprising no more than five pages of arguments (exclusive of any proposed amendment), and the conference participation statement, and otherwise complies with the requirements of the P3 set forth at Section II.A of this notice. If the request is timely and compliant, the technology center will contact the applicant to schedule the conference.

If the review finds that the request is untimely or otherwise fails to comply with the requirements of the P3, a conference will not be held. The response and any proposed amendment filed with the request will be treated under 37 CFR 1.116 in the same manner as any non-P3 response to a final rejection (except that if the request fails to comply because a P3 request previously has been accepted in response to the same final rejection, the response and any proposed amendment will be entered only if the examiner requests them, as mentioned earlier at Section II.A of this notice). The next communication issued by the Office will indicate the reason that the request was found to be untimely or otherwise non-compliant, the result of the treatment under 37 CFR 1.116 of the response and any proposed amendment filed with the request, and the time period for the applicant to take any further action that may be required as dictated by the facts. For example, if the response and any proposed amendment filed together with an untimely or otherwise non-compliant P3 request fails to place the application in condition for allowance, the next Office communication will be an advisory action. On the other hand, if the response and any proposed amendment is enterable under 37 CFR 1.116 and places the application in condition for allowance, the next Office communication will be a notice of allowability.

If the review of a P3 request finds that the request is timely and complies with the requirements of the P3, but the technology center reviewing the request has reached its limit of 200 compliant requests accepted, a conference will not be held. In this situation, the response and any proposed amendment filed with the request will be treated under 37 CFR 1.116 in the same manner as any non-P3 response to a final rejection. The Office may need to take appropriate measures to adjust an examiner's workload if the volume of requests for a P3 conference with any particular examiner becomes excessive.

It is critical for P3 participants to understand that the filing of a P3 request will not toll the six-month statutory period for reply to the final rejection. To avoid abandonment, further action, such as the filing of a notice of appeal or RCE, will need to be taken within the six-month statutory period for responding to the final rejection, unless the applicant receives written notice from the Office that the application has been allowed or that prosecution is being reopened.

2. The Post-Prosecution Pilot Conference

After the Office initially verifies that a P3 request is timely and compliant as discussed at Section II.B.1 of this notice, a Supervisory Patent Examiner (SPE) (preferably the SPE of the examiner of record) will coordinate a panel experienced in the relevant field of technology to review the response under 37 CFR 1.116 filed with the P3 request. The panel may include the examiner of record, the SPE, and a primary examiner (preferably the signing primary examiner for the examiner of record, if the examiner of record is a junior examiner). Every reasonable attempt will be made to select panel members with the most expertise in the relevant technological and legal issues raised by the application under consideration.

Concurrently, the Office will contact the applicant to schedule the conference. The applicant may arrange to participate in-person, by telephone, or by a video conferencing tool, such as WebEx®. Although the Office will make every reasonable attempt to accommodate the applicant and timely schedule the conference, scheduling of the conference lies within the full discretion of the Office. If within ten calendar days from when the Office first contacts the applicant, the Office and the applicant are unable to agree on a time to hold the conference, or if the applicant declines to participate in the conference, the request will be deemed improper and treated in accordance with the discussion at Section II.B.1 of this notice. If the examiner of record is unable to participate on the scheduled date of the conference and rescheduling is not possible, the conference will proceed and the other conferees will gather input from the examiner prior to the conference if possible. The remaining conferees may, at their discretion, opt to include in the panel another examiner from the pertinent art.

The conference will begin with the applicant's presentation, which is limited to 20 minutes. The applicant will be excused from the conference at the end of the presentation. Any materials used by the applicant during the presentation, *e.g.*, a PowerPoint® or exhibit, will be placed in the file and will not count against the five-page limit on arguments. Entry of an affidavit or other evidence included as part of the presentation materials is governed by 37 CFR 1.116. See MPEP 714.12.

The applicant may present on appealable, not petitionable, matters (*e.g.*, applicant may not present an argument that the final rejection was premature). The applicant may present arguments directed to the outstanding record, and, if the response filed with the P3 request includes a proposed amendment, the applicant also may present arguments directed to the patentability of the amended claim(s).

3. The Notice of Decision From Post-Prosecution Pilot Conference

The applicant will be informed of the panel's decision in writing via the mailing of a Notice of Decision from Post-Prosecution Pilot Conference (form PTO–2324). For an accepted P3 request (refer to Section II.B.1 of this notice for the procedure that will be followed for an untimely or non-compliant P3 request), the notice of decision will indicate one of the following: (a) Final rejection upheld; (b) allowable application; or (c) reopen prosecution. In appropriate circumstances, a proposed amendment may accompany the notice of decision proposing changes that, if accepted, may result in an indication of allowability.

a. Final Rejection Upheld

If the notice of decision indicates "final rejection upheld," the notice of decision will not contain any additional grounds of rejection or any restatement of a previously made rejection. Instead, the notice of decision will summarize the status of the pending claims (allowed, objected to, rejected, or withdrawn from consideration) and the reasons for maintaining any rejection, and include an indication of any rejection that has been withdrawn as a result of the conference.

For a P3 request that includes a proposed amendment as part of the response under 37 CFR 1.116, a notice of decision indicating "final rejection upheld" also will communicate the status of the proposed amendment for purposes of appeal (entered/not entered). If the proposed amendment is entered for purposes of appeal, and the notice of decision indicates which individual rejection(s) set forth in the final Office action would be used to reject the amended claim(s), then any subsequent examiner's answer may include the rejection(s) of the amended claim(s), and such rejection(s) made in the examiner's answer would not be considered a new ground of rejection.

If a notice of decision indicates "final rejection upheld," the time period for taking further action in response to the final rejection expires on (1) the mailing date of the notice of decision; or (2) the date set forth in the final rejection, whichever is later. As discussed previously, to avoid abandonment, the applicant must file a notice of appeal or RCE within the statutory period for response to the final rejection. Extensions of time may be obtained under 37 CFR 1.136(a), but the period for response may not be extended beyond the six-month statutory period for response.

A notice of decision indicating "final rejection upheld" is not petitionable. A decision to maintain a rejection is subject to appeal. Accordingly, the Office will not grant a petition seeking reconsideration of a panel decision upholding the final rejection. The applicant maintains the right of appeal under 35 U.S.C. 134 by filing a notice of appeal and an appeal brief and having the appeal considered by the PTAB.

b. Allowable Application

If the notice of decision indicates "allowable application," the notice of decision will be mailed concurrently with a Notice of Allowance, and the notice of decision will state that the rejection(s) is/are withdrawn

c. Reopen Prosecution

If the notice of decision indicates "reopen prosecution," the notice of decision will state that the rejection(s) is/are withdrawn and a new Office action will be mailed. The notice of decision also will state that no further action is required by the applicant until further notice.

4. Actions That Will Terminate a Post-Prosecution Pilot Conference

If the applicant files any of the following after the date of filing a P3 request, but prior to a notice of decision from the panel of examiners, processing of the P3 request will end without a decision on the merits of the P3 request: a notice of appeal; a RCE; an express abandonment under 37 CFR 1.138; a request for the declaration of interference; or a petition requesting the institution of a derivation proceeding. The response and any proposed amendment filed with the request will be treated under 37 CFR 1.116 in the same manner as any non-P3 response to a final rejection. The next communication issued by the Office will indicate the reason that processing of the P3 request was terminated, the result of the treatment under 37 CFR 1.116 of the response and any proposed amendment filed with the request, and the time period for the applicant to take any further action that may be required as dictated by the facts.

In addition, as stated earlier, once a P3 request has been accepted in response to a final rejection, no additional response under 37 CFR 1.116 to the same final rejection will be entered, other than one that the examiner has requested because the examiner agrees it would place the application in condition for allowance. This condition of the P3 holds true regardless of whether the additional response is filed prior to, on the same day as, or after a notice of decision from the panel of examiners.

Finally, at any point during the processing of a P3 request, the examiner may enter an Examiner's Amendment placing the application in condition for allowance.

III. Request for Comments

The Office has three main goals for the P3: (1) Increase the value of after final practice; (2) reduce the number of appeals and the issues to be taken on appeal to the PTAB and the number of RCEs; and (3) streamline the options available to an applicant during after final practice. The Office is requesting public comment on the P3 and other suggestions to improve after final practice and reduce the number of both appeals and issues taken up for appeal to the PTAB and RCEs. The Office plans to evaluate the public feedback and the balance between the degree to which the P3 achieves its goals and the examining resources it expends. The Office will provide advance notification before modifying and/or extending the P3 or making the P3 permanent.

Dated: July 7, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–16423 Filed 7–8–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences ("the University").

ACTION: Quarterly meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following meeting of the Board of Regents, Uniformed Services University of the Health Sciences ("the Board").

DATES: Tuesday, August 2, 2016, from 8:00 a.m. to 10:45 a.m. (Open Session) and 10:50 a.m. to 11:45 a.m. (Closed Session).

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Jennifer Nuetzi James, Designated Federal Officer, 4301 Jones Bridge Road, D3002, Bethesda, Maryland 20814; telephone 301–295–3066; email *jennifer.nuetzi-james@usuhs.edu.*

SUPPLEMENTARY INFORMATION: This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness, on academic and administrative matters critical to the full accreditation and successful operation of the University. These actions are necessary for the University to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The actions scheduled to occur include the review of the minutes from the Board meeting held on May 20, 2016; recommendations regarding the awarding of post-baccalaureate degrees; recommendations regarding the approval of faculty appointments and promotions; and recommendations regarding award nominations. The University President will provide a report on recent actions affecting academic and operational aspects of the University. Member Reports will include an Academics Summary consisting of reports from the Dean of the School of Medicine, Dean of the Graduate School of Nursing, Executive Dean of the Postgraduate Dental College, and the Vice President for Research. Member Reports will also include a Finance and Administration Summary consisting of reports from the Senior Vice President, Southern Region; Senior Vice President, Western Region; Vice

President for Finance and Administration; the USU Brigade; and the Office of General Counsel. The Armed Forces Radiobiology Research Institute (AFRRI) and the President of the USU Faculty Senate will both provide annual updates; a report will be provided on USU interprofessional education, and the meeting will conclude with a report from The American Genome Center at USU. A closed session will be held, after the open session, to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8:00 a.m. to 10:45 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Jennifer Nuetzi James no later than five business days prior to the meeting, at the address and phone number noted in the **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the Department of Defense has determined that the portion of the meeting from 10:50 a.m. to 11:45 a.m. shall be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Office of the Department of Defense General Counsel, has determined in writing that this portion of the committee's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to section 10(a)(3) of the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least 5 calendar days prior to the meeting, otherwise, the comments may not be provided to or considered by the Board until a later date. The Designated Federal Officer will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: July 5, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–16228 Filed 7–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[Docket No. EERE–2013–BT–NOC–0005]

Solicitation of Nominations for Membership on the Appliance Standards and Rulemaking Federal Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Solicitation of nominations for membership.

SUMMARY: To ensure a wide range of candidates and a balanced committee, the U.S. Department of Energy (DOE) announces the solicitation of nominations to fill upcoming vacancies on the Appliance Standards and Rulemaking Federal Advisory Committee.

DATES: All nomination information should be provided in a single, complete package submitted electronically or postmarked August 10, 2016.

ADDRESSES: Nominations packages should be submitted either electronically or by mail, but not by both methods. Complete nomination packages identified by docket number EERE–2013–BT–NOC–0005 may be submitted by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ASRAC@ee.doe.gov.* Include docket number EERE–2013–BT–NOC–0005 in the subject line of the message.

3. *Mail:* Ms. Emily Marchetti, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Emily Marchetti, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–1824. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. No telefacsimilies (faxes) will be accepted.

It is recommended that nominations be submitted in electronic format via email to *asrac@ee.doe.gov.* Submissions submitted by mail are welcome, but may be delayed in delivery due to the DOE mail vetting procedures in place. For submission by mail, please send to Ms. Emily Marchetti, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

SUPPLEMENTARY INFORMATION: The Committee will provide advice and recommendations to the Secretary of Energy on the DOE's Appliance and Equipment Standards Program's test procedures and rulemaking determinations. The Committee's scope is to review and make recommendations on the: (1) Development of minimum efficiency standards for residential appliances and commercial equipment, (2) development of product test procedures, (3) certification and enforcement of standards, (4) labeling for various residential products and commercial equipment, and (5) specific issues of concern to DOE as requested by the Secretary of Energy, the Assistant Secretary for Energy Efficiency and Renewable Energy, and the Buildings Technologies Office's Director.

To facilitate the functioning of the Committee, working group (*i.e.,* subcommittees) may be formed with the approval of the Department of Energy. The objectives of the working groups are to make recommendations to the parent committee with respect to particular matters related to the responsibilities of the parent committee. Such working groups may not work independently of the chartered committee and must report their recommendations and advice to the full committee for full deliberation and discussion. Subcommittee members are appointed with DOE approval.

DOE is hereby soliciting nominations for members of the Appliance Standards and Rulemaking Federal Advisory Committee. The Committee is expected to be continuing in nature. Members will be selected with a view toward achieving a balanced committee of experts in fields relevant to energy efficiency, appliance and commercial equipment standards to include DOE, as well as representatives of industry (including manufacturers and trade associations representing manufacturers, component manufacturers and related suppliers, and retailers), utilities, energy efficiency/environmental advocacy groups and consumers. Committee members will serve for a term of three years or less and may be reappointed for successive terms, with no more than two successive terms. Appointments may be made in a manner that allows the terms of the members serving at any time to expire at spaced intervals, so as to ensure continuity in the functioning of the Committee. Some Committee members may be appointed as special Government employees, experts in fields relevant to energy efficiency and appliance and commercial equipment standards; or as representatives of industry (including manufacturers and trade associations representing manufacturers, component manufacturers and related suppliers, and retailers), utilities, energy efficiency/environmental advocacy groups and consumers. Special Government employees will be subject to certain ethical restrictions and such members will be required to submit certain information in connection with the appointment process.

Members of the Committee will serve without compensation; however, each member may be reimbursed in accordance with Federal Travel Regulations for authorized travel and per diem expenses incurred while attending Committee meetings.

Process and Deadline for Submitting Nominations: Qualified individuals can self-nominate or be nominated by any individual or organization. Nominators should submit:

1. The nominee's current resume or curriculum vitae and contact information, including mailing address, email address, and telephone number;
2. A letter of interest, including a summary of how the nominee's experience and expertise would support the Committee's objectives;
3. An affirmative statement that: (a) The nominee is not currently a federally-registered lobbyist and will not be a federally-registered lobbyist at the time of appointment and during his/her tenure as a Committee member, or (b) if the nominee is currently a federally-registered lobbyist, that the nominee will no longer be a federally-registered lobbyist at the time of appointment to the Committee and during his/her tenure as a member.

All nomination information should be provided in a single, complete package by the deadline specified in this notice. Nominations packages should be submitted by either mail or electronically, but not by both methods. Should more information be needed, DOE staff will contact the nominee, obtain information from the nominee's past affiliations or obtain information from publicly available sources, such as the internet. A selection team will review the nomination packages. This team will be comprised of representatives from several DOE Offices. The selection team will seek balanced viewpoints and consider many criteria, including: (a) Scientific or technical expertise, knowledge, and experience; (b) stakeholder representation; (c) availability and willingness to serve; and (d) skills working in committees, working groups and advisory panels. The selection team will make recommendations regarding membership to the Secretary of Energy for review and selection of Committee members.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations to the Committee take into account the needs of the diverse groups served by DOE, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the needs of women and men of all racial and ethnic groups, and persons with disabilities. Please note, however, that Federally-registered lobbyists and individuals already serving on another Federal advisory committee are ineligible for nomination.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky by telephone at 202–287–1692 or by email at *asrac@ee.doe.gov.*

Issued in Washington, DC, on July 1, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–16194 Filed 7–8–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–139–000.
Applicants: Slate Creek Wind Project, LLC.
Description: Application for Authorization under Section 203 of the FPA and Request for Waivers, Confidential Treatment, and Expedited Action of Slate Creek Wind Project, LLC.
Filed Date: 6/30/16.
Accession Number: 20160630–5426.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: EC16–140–000.
Applicants: Duquesne Light Company, Duquesne Power, LLC, Three Rivers Utility Holdings, LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Action and Confidential Treatment of Duquesne Light Company, et al.
Filed Date: 7/1/16.
Accession Number: 20160701–5320.
Comments Due: 5 p.m. ET 7/22/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1276–006; ER10–1292–005; ER10–1287–005; ER10–1303–005; ER10–1319–007; ER10–1353–007.
Applicants: Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generation Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, LLC, Dearborn Industrial Generation, L.L.C.
Description: Amendment to May 2, 2016 Notice of Non-Material Change in Status of Consumer Energy Company, et al.
Filed Date: 6/30/16.
Accession Number: 20160630–5430.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER10–2739–013; ER13–1430–005; ER10–2743–008; ER13–1561–005; ER10–2755–011; ER16–1652–001; ER10–2751–008.
Applicants: LS Power Marketing, LLC, Arlington Valley Solar Energy II, LLC, Bluegrass Generation Company, L.L.C., Centinela Solar Energy, LLC, Las Vegas Power Company, LLC, LifeEnergy LLC, Renaissance Power, L.L.C.
Description: Market Power Update for the Southwest Region of LS Southwest MBR Sellers.
Filed Date: 6/30/16.
Accession Number: 20160630–5435.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–1672–000.
Applicants: Chaves County Solar, LLC.
Description: Amendment to May 11, 2016 Chaves County Solar, LLC tariff filing.
Filed Date: 6/30/16.
Accession Number: 20160630–5431.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2130–000.
Applicants: Public Service Company of New Mexico.
Description: Compliance filing: Compliance Filing to Correct eTariff Record to be effective 10/1/2015.
Filed Date: 7/1/16.
Accession Number: 20160701–5282.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2131–000.
Applicants: Transource West Virginia, LLC.
Description: Application of Transource West Virginia, LLC regarding regulatory asset.
Filed Date: 7/1/16.
Accession Number: 20160701–5325.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2132–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–07–05_SA 2301 MidAmerican-MidAmerican 3rd Rev GIA (R34/R65/J191) to be effective 7/6/2016.
Filed Date: 7/5/16.
Accession Number: 20160705–5065.
Comments Due: 5 p.m. ET 7/26/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH16–9–000.
Applicants: Spire Inc.
Description: Spire Inc. submits FERC 65–A Notice of Non Material Change in Facts of Exemption Notification.
Filed Date: 7/1/16.
Accession Number: 20160701–5326.
Comments Due: 5 p.m. ET 7/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16340 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–51–001.
Applicants: DCP Guadalupe Pipeline, LLC.
Description: Tariff filing per 284.123(b), (e): Amended SOC and supplemental information per 284.123(g)(7). Effective 5/1/2016; Filing Type: 1270.
Filed Date: 6/24/2016.
Accession Number: 201606245098, *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*
Comments Due: 5 p.m. ET 7/15/16.
284.123(g) Protests Due: 5 p.m. ET 7/15/16.

Docket Number: PR16–60–000.
Applicants: Enable Oklahoma Intrastate Transmission, LLC.
Description: Tariff filing per 284.123(e) + (g): Revised Transportation SOC 2016 to be effective 7/25/2016; Filing Type: 1280.
Filed Date: 6/23/2016.
Accession Number: 201606235163, *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*
Comments Due: 5 p.m. ET 7/14/16.
284.123(g) Protests Due: 5 p.m. ET 8/22/16.

Docket Numbers: RP16–1041–000.
Applicants: Enable Mississippi River Transmission, L.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to Remove Union Electric #3668 Effective 5_25_16 to be effective 5/25/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5132.
Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: RP16–1042–000.
Applicants: Granite State Gas Transmission, Inc.
Description: § 4(d) Rate Filing: Section 4 Rate Change to be effective 8/1/2016.
Filed Date: 6/24/16.
Accession Number: 20160624–5142.
Comments Due: 5 p.m. ET 7/6/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP95–408–083.
Applicants: Columbia Gas Transmission, LLC.
Description: Annual Report on Sharing Profits from Base Gas Sales with Customers of Columbia Gas Transmission, LLC under RP95–408.
Filed Date: 4/29/16.
Accession Number: 20160429–5550.
Comments Due: 5 p.m. ET 7/6/16.

Docket Numbers: RP16–872–001.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Compliance filing Non-Conforming Negotiated TSA Compliance Filing (Anadarko) to be effective 8/1/2016.
Filed Date: 6/24/16.
Accession Number: 20160624–5091.
Comments Due: 5 p.m. ET 7/6/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16239 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2290–005.
Applicants: Avista Corporation.
Description: Triennial Market Power Update for the Northwest Region of Avista Corporation.
Filed Date: 6/30/16.
Accession Number: 20160630–5409.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER10–3117–007; ER15–1308–002; ER15–1173–004;

ER15–1172–004; ER15–1171–004; ER15–1170–004; ER14–2823–006; ER13–445–008; ER11–4061–008; ER11–4060–008; ER10–3300–012; ER10–3115–005.

Applicants: Badger Creek Limited, Bear Mountain Ltd., Chalk Cliff Limited, Double C Generation Limited Partnership, High Sierra Ltd., Kern Front Ltd., Kingfisher Wind, LLC, La Paloma Generating Company, LLC, Lea Power Partners, LLC, Live Oak Ltd., McKittrick Ltd., Waterside Power, LLC.

Description: Supplement to April 25, 2016 Notice of Change in Status by Lea Power Partners, LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5398.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER10–3246–008; ER10–2475–013; ER10–2474–013; ER13–1266–008.

Applicants: PacifiCorp, Nevada Power Company, Sierra Pacific Power Company, CalEnergy, LLC.

Description: Triennial Market Power Analysis for the Northwest Region of the BHE Northwest Companies under ER10–3246, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5400.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER13–520–006; ER13–521–006; ER13–1441–006; ER13–1442–006; ER12–1626–007; ER13–1266–009; ER13–1267–006; ER13–1268–006; ER13–1269–006; ER13–1270–006; ER13–1271–006; ER13–1272–006; ER13–1273–006; ER10–2605–010.

Applicants: Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar, LLC, CalEnergy, LLC, CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power LLC, Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates.

Description: Triennial Filing for the Southwest Region of the BHE Renewables, LLC Companies, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5403.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER14–1656–009.

Applicants: CSOLAR IV West, LLC.

Description: Updated Market Power Analysis of CSOLAR IV WEST, LLC.

Filed Date: 6/30/16.

Accession Number: 20160630–5401.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER14–2244–001.

Applicants: La Paloma Generating Company, LLC.

Description: Market-Based Triennial Review Filing: Triennial Updated Market Power Analysis for the Southwest Region and Revised MBR to be effective 8/29/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5295.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–292–000.

Applicants: Northern Virginia Electric Cooperative, Inc.

Description: Northern Virginia Electric Cooperative, Inc. submits tariff filing per 35.19a(b): Refund Report (Supplement) to be effective N/A.

Filed Date: 6/30/16.

Accession Number: 20160630–5405.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–748–002.

Applicants: Sentinel Energy Center, LLC.

Description: Triennial Market Power Update of Sentinel Energy Center, LLC.

Filed Date: 6/30/16.

Accession Number: 20160630–5404.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–1649–002.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 20160701_Compliance on June 1, 2016 Order—Aliso Canyon to be effective 6/2/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5004.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–1690–000.

Applicants: Public Service Company of Colorado.

Description: Supplement to Public Service Company of Colorado tariff filing (Transmittal Letter).

Filed Date: 6/28/16.

Accession Number: 20160628–5273.

Comments Due: 5 p.m. ET 7/19/16.

Docket Numbers: ER16–1924–001.

Applicants: Bison Solar LLC.

Description: Tariff Amendment: Bison Solar Amended Market Based Rate Tariff to be effective 8/1/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5080.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–1925–001.

Applicants: Pavant Solar II LLC.

Description: Tariff Amendment: Pavant Amended MBR to be effective 8/1/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5082.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–1926–001.

Applicants: San Isabel Solar LLC.

Description: Tariff Amendment: San Isabel Solar Amended Market Based Rate Tariff to be effective 8/1/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5066.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2109–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: Service Agreement No. 885, PARS Palmdale 1 Project to be effective 8/30/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5302.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2110–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notices of Cancellation GIA & DSA SunEdison ? 2220 Almond Avenue Project to be effective 6/15/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5319.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2111–000.

Applicants: Florida Power & Light Company.

Description: Section 205(d) Rate Filing: FPL and FMPA Transmission Service Agreement For St. Lucie Unit No. 2 to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5328.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2112–000.

Applicants: Pacific Gas and Electric Company.

Description: Section 205(d) Rate Filing: CDWR Work Performance Agreement for the Thermalito Restoration Project (SA 275) to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5345.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2113–000.

Applicants: Portland General Electric Company.

Description: Compliance filing: Compliance Filing for Order No. 819 to be effective 2/25/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5003.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2114–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 3218 KCP&L and KCP&L–GMO Interconnection Agreement to be effective 6/27/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5058.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2115–000.

Applicants: NorthWestern Corporation.

Description: Tariff Cancellation: Notice of Cancellation—SA 744, Firm Point-to-Point TSA with Energy Keepers Inc to be effective 9/1/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5084.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2116–000.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: VEPCO submits revisions to OATT, Attach. H–16A to address income tax issues to be effective 9/1/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5095.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2117–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 2881R3 City of Chanute, KS NITSA NOA to be effective 9/1/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5103.

Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2118–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2016–07–01_SA 2925 ITC Midwest-Prairie Wind Energy GIA (J344) to be effective 7/2/2016.

Filed Date: 7/1/16.

Accession Number: 20160701–5116.

Comments Due: 5 p.m. ET 7/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16242 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–64–000]

ANR Pipeline Company; Notice of Schedule for Environmental Review of the Collierville Expansion Project

On January 20, 2016, ANR Pipeline Company (ANR) filed an application in Docket No. CP16–64–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Collierville Expansion Project (Project). The Project would expand the delivery capability of the existing Collierville Meter Station by an additional 200,000 dekatherms per day, enabling ANR to provide requested service to the Tennessee Valley Authority's pending Allen Combined Cycle Power Plant in Memphis, Tennessee.

On February 3, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—July 29, 2016
90-day Federal Authorization Decision Deadline—October 27, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would consist of the following:

- A new Collierville Compressor Station containing one 4,700 horsepower gas turbine compressor unit and ancillary equipment, including an emergency generator unit, a condensate tank, new control building, and compressor building;
- suction and discharge interconnect station piping; and
- upgrades to the existing Collierville Meter Station.

Background

On February 26, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Collierville Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Commission did not receive comments in response to the NOI.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.,* CP16–64), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: June 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16236 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2249–005.

Applicants: Portland General Electric Company.

Description: Triennial Market Power Analysis in the Northwest Region for Portland General Electric Company.

Filed Date: 6/30/16.

Accession Number: 20160630–5443.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER10–2374–012; ER10–1533–013.

Applicants: Puget Sound Energy, Inc., Macquarie Energy LLC.

Description: Updated Market Power Analysis for the Northwest Region of Puget Sound Energy, Inc., et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5437.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER10–2822–009; ER16–1238–001; ER16–1250–001; ER10–3158–007; ER12–308–007; ER10–3162–007; ER10–3161–007.

Applicants: Atlantic Renewable Projects II LLC, Avangrid Arizona Renewables, LLC, Avangrid Renewables, LLC, Dillon Wind LLC, Manzana Wind LLC, Mountain View Power Partners III, LLC, Shiloh I Wind Project, LLC.

Description: Updated Market Power Analysis for the Southwest Region of Atlantic Renewable Projects II LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5439.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER11–4436–003; ER10–2473–004; ER10–2502–004; ER10–2472–004; ER11–2724–005.

Applicants: Black Hills Power, Inc., Cheyenne Light, Fuel & Power Company, Black Hills/Colorado Electric Utility Company, Black Hills Wyoming, LLC, Black Hills Colorado IPP, LLC.

Description: Updated Market Power Analysis of the Black Hills MBR Sellers for the Northwest Region.

Filed Date: 6/30/16.

Accession Number: 20160630–5441.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER15–632–004; ER15–634–004; ER14–2466–005; ER14–2465–005; ER14–2939–003; ER15–2728–004.

Applicants: CID Solar, LLC, Cottonwood Solar, LLC, RE Camelot LLC, RE Columbia Two LLC, Imperial Valley Solar Company (IVSC) 2, LLC, Maricopa West Solar PV, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of CID Solar, LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5440.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–1707–001.

Applicants: Upper Peninsula Power Company.

Description: Tariff Amendment: Amended and Restated Project Service Agreement to be effective 9/3/2016.

Filed Date: 7/5/16.

Accession Number: 20160705–5128.

Comments Due: 5 p.m. ET 7/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16341 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–88–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Schedule for Environmental Review of the Abandonment and Capacity Restoration Project

On February 13, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application in Docket No. CP15–88–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity to construct, operate, and maintain certain natural gas pipeline facilities, and authorization to abandon certain facilities, collectively known as the Abandonment and Capacity Restoration Project (Project). The Project purpose is to disconnect and abandon segments of the Tennessee pipeline system, which would be removed from interstate natural gas service. Tennessee further proposes as part of the Project to construct and operate new natural gas infrastructure to maintain the service and capacity of the remaining existing natural gas system at its current level.

On March 2, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its *Notice of Application* for the Project. The notice alerted agencies responsible for issuing federal authorizations of the requirement to complete necessary reviews and reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Environmental Assessment (EA) prepared by Commission staff. This *Notice of Schedule* identifies the Commission staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—September 2, 2016
90-day Federal Authorization Decision Deadline—December 1, 2016

If a schedule change becomes necessary, additional notice will be provided so the relevant agencies are kept informed of the Project's progress.

Project Description

Tennessee proposes to abandon in place and remove from service approximately 964 miles of Tennessee's existing pipelines that run from Natchitoches Parish, Louisiana, through Tennessee and Kentucky, to Columbiana County, Ohio. Tennessee currently operates six parallel pipelines that transport natural gas from the Gulf of Mexico region to the Northeast markets. The proposed Project would occur on Tennessee's existing 100 and 200 Lines. In order to replace capacity that would be lost due to the abandonment, Tennessee would modify and construct certain facilities along the existing pipelines not proposed for abandonment including four new mid-point compressor stations in Ohio, a new 7.7-mile-long pipeline loop[1] in Kentucky, and modifications to existing compressor stations in Kentucky. The Project would also require the removal of certain crossovers, taps, valves and miscellaneous pipe, and the relocation and/or installation of new taps to complete the physical separation of the abandoned line from Tennessee's retained pipelines.

Background

On April 17, 2015, the Commission issued a *Notice of Intent To Prepare an Environmental Assessment for the Proposed Abandonment and Capacity Restoration Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to Tennessee's application and the NOI, the Commission received comments from affected landowners, interested individuals and organizations, elected officials, and federal, state, and local agencies.

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[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

The primary issues raised by the commentors included concerns about increasing pressure in older pipelines, exposed pipelines, and corrosion; concerns about repurposing existing pipelines for transport of natural gas liquids; air quality and noise impacts; karst topography and cumulative impacts.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time spent researching proceedings by automatically providing notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

The FERC's eLibrary system can also be used to search formal issuances and submittals from the public docket. To use, select the "eLibrary" link, select "General Search" from the eLibrary menu located at *www.ferc.gov/docs-filing/elibrary.asp,* enter the selected date range and "Docket Number" excluding the last three digits (*i.e.,* CP15–88), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*).

Dated: June 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16235 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1043–000.
Applicants: Texas Eastern Transmission, LP.
Description: Section 4(d) Rate Filing: Negotiated Rates—July 2016 Chevron TEAM 2014 Releases to be effective 7/1/2016.
Filed Date: 6/27/16.
Accession Number: 20160627–5128.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: RP16–1044–000.
Applicants: Texas Eastern Transmission, LP.
Description: Section 4(d) Rate Filing: TETLP Jun2016 Cleanup Filing—Non-conforming Agreements List to be effective 7/1/2016.
Filed Date: 6/27/16.
Accession Number: 20160627–5166.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: RP16–1045–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) Rate Filing: BP Settlement Filing to be effective 8/1/2016.
Filed Date: 6/27/16.
Accession Number: 20160627–5169.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: RP16–1046–000.
Applicants: DBM Pipeline, LLC.
Description: Section 4(d) Rate Filing: Negotiated Rate Filing to be effective 7/1/2016.
Filed Date: 6/28/16.
Accession Number: 20160628–5131.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: RP16–1047–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Section 4(d) Rate Filing: Big Sandy EPC 2016 to be effective 8/1/2016.
Filed Date: 6/28/16.
Accession Number: 20160628–5231.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: RP16–1048–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Section 4(d) Rate Filing: Non-Conforming Agreement_Rock Springs to be effective 8/1/2016.
Filed Date: 6/29/16.
Accession Number: 20160629–5001.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: RP16–1049–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: Section 4(d) Rate Filing: Update List of Non-Conforming Service Agreements (Rock Springs) to be effective 8/1/2016.
Filed Date: 6/29/16.
Accession Number: 20160629–5002.
Comments Due: 5 p.m. ET 7/11/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16240 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–137–000.
Applicants: American Transmission Company LLC.
Description: Application for Authorization Pursuant to Section 203 of the FPA American Transmission Company LLC.
Filed Date: 6/30/16.
Accession Number: 20160630–5286.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: EC16–138–000.
Applicants: Effingham County Power, LLC, SEPG Energy Marketing Services, LLC, Washington County Power, LLC.
Description: Application for Authorization Pursuant to Section 203 of the FPA of Effingham County Power, LLC, et al.
Filed Date: 6/30/16.
Accession Number: 20160630–5280.
Comments Due: 5 p.m. ET 7/21/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2757–006; ER10–2756–006.

Applicants: Arlington Valley, LLC, Griffith Energy LLC.

Description: Triennial Market Power Update for the Southwest Region of Arlington Valley, LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5189.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER15–1596–002; ER15–1599–002; ER15–1598–002; ER11–4400–006; ER11–4398–005; ER10–2616–009; ER10–2593–004 ER10–2590–004.

Applicants: Dynegy Commercial Asset Management, LLC, Dynegy Energy Services (East), LLC, Dynegy Marketing and Trade, LLC, Dynegy Midwest Generation, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, Dynegy Power Marketing, LLC, Dynegy Resources Management, LLC.

Description: Updated Market Power Analysis for the Southwest Region of Dynegy Commercial Asset Management, LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5216.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–1211–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–06–30_SA 2906 IPL–IPL GIA (J401) Compliance to be effective 3/18/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5154.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2075–000.

Applicants: Avista Corporation.

Description: Compliance filing: Avista Corp Order 819 Compliance Filing to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5000.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2076–000.

Applicants: Puget Sound Energy, Inc.

Description: Section 205(d) Rate Filing: MBR Tariff Revisions re 784 & 819 to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5035.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2077–000.

Applicants: Badger Creek Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5047.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2078–000.

Applicants: Bear Mountain Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5049.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2079–000.

Applicants: Chalk Cliff Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5050.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2080–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: Section 205(d) Rate Filing: 2016–06–30_SA 1975 Ameren-Norris 5th Rev WDS Agreement to be effective 6/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5051.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2081–000.

Applicants: Double C Generation Limited Partnership.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5055.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2082–000.

Applicants: High Sierra Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/20160.

Filed Date: 6/30/16.

Accession Number: 20160630–5058.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2083–000.

Applicants: Kern Front Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5062.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2084–000.

Applicants: Live Oak Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5066.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2085–000.

Applicants: McKittrick Limited.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5067.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2086–000.

Applicants: Cabazon Wind Partners, LLC.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5089.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2087–000.

Applicants: Griffith Energy LLC.

Description: Compliance filing: Revised Market Based Rate Tariff for Order 819 to be effective 8/29/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5090.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2088–000.

Applicants: Arlington Valley, LLC.

Description: Compliance filing: Revised Market Based Rate Tariff for Order 819 to be effective 8/29/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5091.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2089–000.

Applicants: Whitewater Hill Wind Partners, LLC.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Revisions to be effective 7/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5101.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2090–000.

Applicants: Avista Corporation.

Description: Section 205(d) Rate Filing: Avista Corp OATT Cost of Capacity Filing to be effective 9/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5108.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2091–000.

Applicants: Idaho Power Company

Description: Market-Based Triennial Review Filing: 2016 Market Based Rate Triennial Analysis to be effective 7/1/2016.

Filed Date: 6/30/16

Accession Number: 20160630–5115.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2092–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 1976R5 Kaw Valley Electric Cooperative, Inc. NITSA and NOA to be effective 9/1/2016.

Filed Date: 6/30/16.

Accession Number: 20160630–5152.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2093–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 2900R7 KMEA NITSA NOA to be effective 9/1/2016.

Filed Date: 6/30/16.
Accession Number: 20160630–5153.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2094–000.
Applicants: Chevron Power Holdings Inc.
Description: Market-Based Triennial Review Filing: Southwest Triennial & Revised Tariff to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5175.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2095–000.
Applicants: Midwest Generation, LLC.
Description: Section 205(d) Rate Filing: Revised FERC Electric Tariff, Original Volume No. 3 to be effective 8/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5180.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2096–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits filing per 35.15: Notice of Cancellation of Operations and Maintenance Agreement not filed in eTariff to be effective 07/01/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5184.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2097–000.
Applicants: Vermont Transco, LLC.
Description: Section 205(d) Rate Filing: Vermont Transco LLC Updated Exhibit A for the 1991 Transmission Agreement to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5193.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2098–000.
Applicants: NorthWestern Corporation.
Description: Section 205(d) Rate Filing: SA 783—Firm Point-to-Point TSA with Energy Keepers to be effective 9/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5246.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2099–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: PJM submits revisions to OATT Section 23.1 pursuant to Order No. 739 to be effective 10/1/2010.
Filed Date: 6/30/16.
Accession Number: 20160630–5247.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2100–000.
Applicants: Gila River Power LLC.
Description: Market-Based Triennial Review Filing: Gila River Power LLC Updated MBR Tariff to be effective 6/30/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5248.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2101–000.
Applicants: Entegra Power Services LLC.
Description: Market-Based Triennial Review Filing: Entegra Power Services LLC Updated MBR Tariff to be effective 6/30/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5251.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2102–000.
Applicants: Sentinel Energy Center, LLC.
Description: Section 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/30/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5253.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2103–000.
Applicants: Florida Power & Light Company.
Description: Section 205(d) Rate Filing: FPL and the City of Moore Haven NITSA and NOA to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5262.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2104–000.
Applicants: New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: July 2016 Membership Filing to be effective 6/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5265.
Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2105–000.
Applicants: Castleton Power, LLC.
Description: Market-Based Triennial Review Filing: Castleton Power Triennial Market Review (June 2016) to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5281.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2106–000.
Applicants: Castleton Energy Services, LLC.
Description: Market-Based Triennial Review Filing: Castleton Energy Services Triennial Market Review (June 2016) to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5282.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2107–000.
Applicants: Sundevil Power Holdings, LLC.
Description: Market-Based Triennial Review Filing: Sundevil Triennial Market Review (June 2016) to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5283.
Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2108–000.
Applicants: West Valley Power, LLC.
Description: Market-Based Triennial Review Filing: West Valley Triennial Market Review (June 2016) to be effective 7/1/2016.
Filed Date: 6/30/16.
Accession Number: 20160630–5285.
Comments Due: 5 p.m. ET 8/29/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: June 30, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–16238 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–136–000.
Applicants: Patua Acquisition Company, LLC, Patua Project, LLC.
Description: Application For Prospective Authorization Under Section 203 of the Federal Power Act and Requests for Shortened Comment Period, Expedited Treatment, and Waivers of Patua Acquisition Company, LLC, et al.
Filed Date: 6/29/16.
Accession Number: 20160629–5213.
Comments Due: 5 p.m. ET 7/20/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2867–003; ER10–2862–003; ER11–4625–003; ER13–2169–002; ER11–3634–003.

Applicants: Valencia Power, LLC, Harbor Cogeneration Company, LLC, Colton Power L.P., Goal Line L.P., KES Kingsburg, L.P.

Description: Triennial Market Power Analysis Filing for Southwest Region of the SGOC MBR Companies.

Filed Date: 6/29/16.

Accession Number: 20160629–5215.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER10–3097–006.

Applicants: Bruce Power Inc.

Description: Updated Market Power Analysis for the Southwest Region of Bruce Power Inc.

Filed Date: 6/29/16.

Accession Number: 20160629–5238.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER11–1858–006.

Applicants: NorthWestern Corporation.

Description: Triennial Market Power Analysis for the Northwest Region of NorthWestern Corporation.

Filed Date: 6/29/16.

Accession Number: 20160629–5239.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER11–3013–006; ER10–2870–007; ER10–2865–007.

Applicants: Coolidge Power LLC, TransCanada Power Marketing Ltd, TransCanada Energy Sales Ltd.

Description: Amendment to June 28, 2016 Updated Market Power Analysis for the Southwest Region of the TransCanada Entities.

Filed Date: 6/29/16.

Accession Number: 20160629–5222.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER16–2074–000.

Applicants: Equilon Enterprises LLC.

Description: Market-Based Triennial Review Filing: Southwest Triennial & 819 Tariff Revisions to be effective 6/30/2016.

Filed Date: 6/29/16.

Accession Number: 20160629–5206.

Comments Due: 5 p.m. ET 8/29/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: June 30, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16237 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2265–011; ER12–21–020; ER11–2211–009; ER11–2209–009; ER11–2210–009; ER11–2207–009; ER11–2206–009; ER13–1150–007; ER13–1151–007; ER11–2855–020; ER14–1818–011; ER10–2260–007; ER10–2261–007; ER10–2338–013; ER10–2340–013; ER13–1991–008; ER13–1992–008; ER11–3727–015; ER10–2262–006; ER11–2062–020; ER11–2508–019; ER11–4307–020; ER12–1711–015; ER12–261–019; ER10–2264–007; ER10–1581–017; ER10–2354–009; ER11–2107–011; ER11–2108–011; ER10–2888–020; ER13–1803–011; ER13–1790–011; ER13–1746–012; ER12–1525–015; ER12–2019–013; ER10–2266–006; ER12–2398–014; ER11–3459–014; ER11–4308–020; ER11–2805–019; ER11–2856–020; ER13–2107–010; ER13–2020–010; ER13–2050–010; ER11–2857–020; ER10–2359–008; ER10–2381–008.

Applicants: NRG Power Marketing LLC, Agua Caliente Solar, LLC, Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Alta Wind X, LLC, Alta Wind XI, LLC, Avenal Park LLC, Boston Energy Trading and Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, CP Power Sales Nineteen, L.L.C., CP Power Sales Twenty, L.L.C., Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, El Segundo Energy Center LLC, El Segundo Power, LLC, Energy Plus Holdings LLC, GenOn Energy Management, LLC, Green Mountain Energy Company, High Plains Ranch II, LLC, Independence Energy Group LLC, Long Beach Generation LLC, Long Beach Peakers LLC, Midway-Sunset Cogeneration Company, North Community Turbines LLC, North Wind Turbines LLC, Norwalk Power LLC, NRG California South LP, NRG Delta LLC, NRG Marsh Landing LLC, NRG Solar Alpine LLC, NRG Solar Avra Valley LLC, NRG Solar Blythe LLC, NRG Solar Borrego I LLC, NRG Solar Roadrunner LLC, Reliant Energy Northeast LLC, RRI Energy Services, LLC, Sand Drag LLC, Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC, Sun City Project LLC, Sunrise Power Company, LLC, Walnut Creek Energy, LLC.

Description: Updated Market Power Analysis of the Southwest Region of NRG Power Marketing LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5424.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER10–2464–011; ER13–1139–016; ER13–1585–010; ER10–2465–009; ER11–2657–010; ER14–2630–009.

Applicants: First Wind Energy Marketing, LLC, Imperial Valley Solar 1, LLC, Longfellow Wind, LLC, Milford Wind Corridor Phase I, LLC, Milford Wind Corridor Phase II, LLC, Regulus Solar, LLC.

Description: Market Power Update of First Wind Energy Marketing, LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5418.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER10–3145–007; ER10–3116–007; ER10–3120–007; ER11–2036–007; ER13–1544–004; ER16–930–001; ER10–3128–007; ER10–1800–008; ER10–3136–007; ER11–2701–009; ER10–1728–007.

Applicants: AES Alamitos, LLC, AES Energy Storage, LLC, AES Laurel Mountain, LLC, AES Huntington Beach, L.L.C., AES ES Tait, LLC, AES Ohio Generation, LLC, AES Redondo Beach, L.L.C., Indianapolis Power and Light Company, Mountain View Power Partners, LLC, Mountain View Power Partners IV, LLC, The Dayton Power and Light Company.

Description: Triennial Market Power Analysis for Southwestern Region of AES MBR Affiliates, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5421.

Comments Due: 5 p.m. ET 8/29/16.

Docket Numbers: ER15–1218–004; ER15–2224–003; ER16–1154–003; ER16–1882–001.

Applicants: Solar Star California XIII, LLC, Solar Star Colorado III, LLC, Parrey, LLC, Boulder Solar Power, LLC.

Description: Notice of Non-Material of Change in Status of Solar Star California XIII, LLC, et al.

Filed Date: 6/30/16.

Accession Number: 20160630–5419.

Comments Due: 5 p.m. ET 7/21/16.

Docket Numbers: ER16–2119–000.

Applicants: Hartree Partners, LP.

Description: Baseline eTariff Filing: Hartree Partners, LP Baseline MBR Tariff to be effective 7/31/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5132.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2120–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3125R2 Basin Electric Power Cooperative NITSA and NOA to be effective 6/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5137.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2121–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 1628R10 Western Farmers Electric Cooperative NITSA to be effective 6/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5138.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2122–000.
Applicants: Sunshine Gas Producers, LLC.
Description: Section 205(d) Rate Filing: Sunshine MBR Revisions to be effective 7/5/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5141.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2123–000.
Applicants: Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Section 205(d) Rate Filing: Loss Factor Filing DEC and DEP to be effective 8/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5143.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2124–000.
Applicants: Entergy New Orleans, Inc.
Description: Section 205(d) Rate Filing: ENO–ELL Wholesale Distribution Service Agreement to be effective 9/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5145.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2125–000.
Applicants: Entergy Louisiana, LLC.
Description: Section 205(d) Rate Filing: ELL–ENO Wholesale Distribution Service Agreement to be effective 9/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5146.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2126–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Compliance filing: Revisions to ISO–NE Tariff in Compliance with Order Issued in EL16–38–000 to be effective 8/30/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5147.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2127–000.
Applicants: New York State Electric & Gas Corporation.
Description: Section 205(d) Rate Filing: Rate Schedule FERC No. 87 Supplement to be effective 9/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5189.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2128–000.
Applicants: New York State Electric & Gas Corporation.
Description: Section 205(d) Rate Filing: NYSEG–NYPA Attachment C—O&M Annual Update to be effective 9/1/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5190.
Comments Due: 5 p.m. ET 7/22/16.

Docket Numbers: ER16–2129–000.
Applicants: Pacific Gas and Electric Company.
Description: Section 205(d) Rate Filing: Lathrop Irrigation District EA for 115 kV Interconnection Project to be effective 7/15/2016.
Filed Date: 7/1/16.
Accession Number: 20160701–5277.
Comments Due: 5 p.m. ET 7/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–16243 Filed 7–8–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–9948–91–OAR]

Proposed Information Collection Request; Comment Request; Compliance Assurance Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Compliance Assurance Monitoring Program" (EPA ICR No. 1663.09, OMB Control No. 2060–0376) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2017. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 9, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0152 online using *http://www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mr. Barrett Parker, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5635; email address: *parker.barrett@epa.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Compliance Assurance Monitoring Program (40 CFR part 64)" (EPA ICR No. 1663.09, OMB Control No. 2060–0376) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below.

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1742. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Clean Air Act (CAA) contains several provisions directing the EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth in section 504 and section 114 of the CAA. Under CAA section 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance, certification and reporting requirements to assure compliance with the permit terms and conditions." See also CAA section 504(a) (each permit shall require reporting of monitoring and such other conditions as are necessary to assure compliance). CAA section 504(b) allows us to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Section 114(a)(1) of the CAA provides additional authority concerning monitoring, reporting, and recordkeeping requirements. This section provides the Administrator with the authority to require any owner operator of a source to install and to operate monitoring systems and to record the resulting monitoring data. We promulgated the Compliance Assurance Monitoring rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900), pursuant to these provisions. In accordance with CAA section 114(c) and CAA section 503(e), the monitoring information source owners must submit must also be available to the public except under circumstances set forth in section 114(c) of the CAA. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9.

We are soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting election submission of responses.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are all facilities required to have an operating permit under Title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a Title V permit. See also 40 CFR 70.2 and 71.2.

Respondent's obligation to respond: Mandatory under Title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a Title V permit. See also 40 CFR 70.2 and 71.2.

Estimated number of respondents: There are 24,121 pollutant specific emission units (PSEUs), where the number of respondents is the number of PSEUs subject to the compliance assurance monitoring rule, and 116 permitting authorities. Therefore, the estimated number of respondents is 24,237 (total).

Frequency of response: At least every 6 months per Title V, 70.6(a)(3)(iii)(A) and (B).

Total estimated burden: 51,080 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,998,453 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in Estimates: There is an increase of 607 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to adjustments to the estimates (*e.g.*, to account for permit issuance increases). There is an increase of 1,114 respondents in the average annual number of respondents. This increase is due to an increased number of permitting authorities (4 more) and to an estimated increase in the number of PSEUs (1,110 more).

Dated: July 1, 2016.

Kevin Culligan,

Acting Director, Sector Policies and Programs Division.

[FR Doc. 2016–16347 Filed 7–8–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0984]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission)

invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 9, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0984.

Title: Section 90.35(b)(2), Industrial/Business Pool, and 90.175(b)(1), Frequency Coordinator Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, and State, Local or Tribal Government.

Number of Respondents and Responses: 2,500 respondents; 2,500 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One time reporting requirement and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

Total Annual Burden: 2,500 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Sections 90.35 and 90.175 require third party disclosures by applicants proposing to operate a land mobile radio station. If they have service contours that overlap an existing land mobile station they are required to obtain written concurrence of the frequency coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station.

This information will be used by Commission personnel in evaluating the applicant's need for such frequencies and to minimize the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–16276 Filed 7–8–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10207 McIntosh Commercial Bank Carrollton, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10207 McIntosh Commercial Bank, Carrollton, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of McIntosh Commercial Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective July 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: July 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–16303 Filed 7–8–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10279 Community National Bank at Bartow, Bartow, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10279 Community National Bank at Bartow, Bartow, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Community National Bank at Bartow (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective July 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: July 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–16305 Filed 7–8–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Reinstatement and Renewal; Comment Request; (3064–0029)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the reinstatement and renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995. Currently the FDIC is soliciting comment on the

reinstatement and renewal of the information collection described below.

DATES: Comments must be submitted on or before September 9, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202.898.3767), Counsel MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to reinstate and renew the following previously-approved collection of information:

1. *Title:* Notification of Performance of Bank Services.

OMB Number: 3064–0029.

Form Numbers: FDIC 6120/06.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 40.

Estimated Time per Response: ½ hour.

Frequency of Response: On occasion.

Total estimated annual burden: 20 hours.

General Description of Collection: Insured state nonmember banks and state savings associations are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 6th day of July 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary

[FR Doc. 2016–16339 Filed 7–8–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10504 Eastside Commercial Bank Conyers, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10504 Eastside Commercial Bank, Conyers, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Eastside Commercial Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective July 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: July 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–16306 Filed 7–8–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10260 Olde Cypress Community Bank Clewiston, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10260 Olde Cypress Community Bank, Clewiston, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Olde Cypress Community Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective July 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: July 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–16304 Filed 7–8–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10492 DuPage National Bank, West Chicago, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for DuPage National Bank, West Chicago, Illinois ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of DuPage National Bank on January 17, 2014. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–16302 Filed 7–8–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Bainbridge Bancshares, Inc., Bainbridge, Georgia;* to acquire 100 percent of the outstanding voting stock of Citizens Bank, Cairo, Georgia.

Board of Governors of the Federal Reserve System, July 6, 2016.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–16318 Filed 7–8–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *The W.R.S. 2016 Trust, W.R. Stephens, Jr., Trustee; the E.S.C. 2016 Trust, Elizabeth J. Campbell, Trustee; James Oswald Jacoby, Jr., the Robert L. Schulte Revocable Trust, Robert L. Schulte, Trustee; the Jackson Clay Hunter Revocable Living Trust, Jackson Clay Hunter, Trustee; Debbie Evans, Eric D. Summerhill, Ronald Max Clark, the Sorrells Joint Revocable Trust, W. Kent Sorrells, Trustee; Christopher Edwin Kauffman, Kenneth Aaron Clark, and the TST Trust, Timothy S. Trzebiatowski, Trustee, all of Little Rock, Arkansas; and the Emon A. Mahony Jr. Revocable Trust, Emon A. Mahony, Trustee, El Dorado, Arkansas; Dillon Joyce Ltd., Thomas Hendrick, Partner, Dallas, Texas; the Gary D. Boland and Dana L. Boland Living Trust, Gary D. Boland, Trustee, Ft. Smith, Arkansas; the Martin Family Revocable Living Trust, Bobby Martin, Trustee, Rogers, Arkansas; the Gash Grandchildren's Trust, Ray C. Gash, Trustee, North Little Rock, Arkansas; and the William S. Walker Living Trust, William J. Walker, Trustee, Ft. Smith, Arkansas;* have applied for permission to acquire additional share up to 28.205% of the outstanding shares of Brand Group Holdings, Inc. and its subsidiary, The Brand Banking Company, both of Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, July 6, 2016.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–16319 Filed 7–8–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Non Exclusive License: Hosting and Maintaining the Buy Quiet Web Tool and the Database of Noise Levels for Machinery and Power Tools

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Pursuant to 29 U.S.C. 671, notice is given that the National Institute for Occupational Safety and Health (NIOSH) is soliciting proposals for entities and organizations to host and maintain the Buy Quiet Web Tool and the Database of Noise Levels for Machinery and Power Tools through a non-exclusive license. This web tool and database are intended to provide guidance regarding the Buy Quiet program and provide information on how to adopt a Buy Quiet program as well as provide information about machinery and equipment noise levels. It is the goal of these online resources to inform at-risk individuals and their organizations about occupational noise exposures and practical ways to reduce noise-induced hearing loss. NIOSH will grant a non-exclusive license for the maintenance and hosting of the web tools. The preferred qualifications of the grantee organization are detailed in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Representatives of eligible organizations should submit expressions of interest no later than August 25, 2016.

ADDRESSES: Expressions of interest may be directed electronically to Bryan Beamer *at zmy4@cdc.gov* or mailed to National Institute for Occupational Safety and Health, Division of Applied Research and Technology, 1090 Tusculum Avenue, MS C–27, Cincinnati, OH 45226. Attention: Bryan Beamer.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Bryan Beamer, National Institute for Occupational Safety and Health, Division of Applied Research and Technology, 1090 Tusculum Ave., MS C–27, Cincinnati, OH 45226. Email: *zmy4@cdc.gov.*

SUPPLEMENTARY INFORMATION: NIOSH has developed the Buy Quiet Web Tool and the Database of Noise Levels for Machinery and Power Tools with the goal of reducing noise-induced hearing loss among the nation's workers by providing information and tools to facilitate, document, and track the progress of Buy Quiet programs. NIOSH is looking for one organization to host and maintain either one or both of the Buy Quiet Web Tool and the interactive Database of Noise Levels for Machinery and Power Tools. The grantee organization would ideally possess the following qualifications:

- Ability to promote the web tools with national reach;
- access to subject matter experts in information technologies related to Web-based database development and maintenance;
- access to subject matter experts in occupational noise mitigation;
- access to appropriate information technology hardware and software;
- ability to solicit, accept, vet and maintain noise level data from manufacturers for the Database of Noise Levels for Machinery and Power Tools;
- ability to solicit and maintain Buy Quiet program data for a variety of companies; and
- ability to host and maintain the web tools for a minimum period of 3 years from the date the tools are made available to the general public.

Furthermore, the organization is to make these tools available to the general public within 12 months of signing the license agreement.

Links to the NIOSH Buy Quiet Web site and the current NIOSH Power Tools Database can be found here:

- *http://www.cdc.gov/niosh/topics/buyquiet/default.html*—Buy Quiet Web site
- *http://wwwn.cdc.gov/niosh-sound-vibration/*—NIOSH Power Tools Database

Information Needed: Expressions of interest should outline the organization's ability to meet the preferred qualifications mentioned above and be no more than four pages in length.

Dated: July 5, 2016.

Frank Hearl,

Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016–16267 Filed 7–8–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16ARP]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Zika Virus Persistence in Body Fluids of Patients with Zika Virus Infection in Puerto Rico (ZIPER Study)—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Zika virus (ZIKV) is a mosquito-borne flavivirus that has recently emerged in the Americas. Previously, outbreaks had occurred in Asia and islands in the South Pacific. In addition to mosquito-to-human transmission, ZIKV infections have been documented through sexual transmission, blood transfusion, laboratory exposure, intrauterine transmission resulting in congenital infection, and intrapartum transmission from a viremic mother to her newborn. Along with serum, ZIKV RNA has been detected in semen, urine, breast milk, and amniotic fluid. ZIKV IgM antibodies are generally first detectable at 4 to 8 days after onset of illness and likely persist for weeks to months; however, the duration of persistence of anti-ZIKV IgM antibodies is unknown as well as the timing from infection to the development of IgG antibodies. The prevalence of ZIKV RNA in various body fluids among patients with acute ZIKV infection and the length of time that ZIKV RNA might persist in these body fluids is not well understood, nor the frequency with which it is infectious. Characterizing these parameters has implications both for diagnosis of ZIKV infection using specimens other than blood than may be more convenient to collect, as well as for potential human-to-human transmission.

The Zika PERsistence (ZIPER) study will help inform the presence and duration of ZIKV shedding in several body fluids among RT–PCR-positive ZIKV cases from Puerto Rico. It will also provide information regarding the duration of detection of anti-ZIKV IgM antibodies and the time for development of IgG antibodies among the same population. In addition, this protocol will determine the prevalence of anti-ZIKV IgM and IgG, and virus shedding in body fluids among household contacts of ZIKV cases.

We propose to investigate the persistence (shedding) of ZIKV in different body fluids and its relation to immune response to provide a basis for development of non-blood-based diagnostic tools, and target and refine public health interventions to arrest ongoing spread of infection. To do so, we will conduct a prospective cohort study of individuals with reverse transcription-polymerase chain reaction (RT–PCR) positive ZIKV infection and a cross-sectional study of their household contacts. Results and analyses will be used to update relevant counseling messages and recommendations from the CDC.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 374.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public Health Personnel	Shedding Questionnaire (Symptomatics)	200	8	10/60
	Shedding Questionnaire (Cross-Sectional Asymptomatics)	400	1	10/60
General Public	Shedding Eligibility Form	1,000	1	2/60
	Contact Information Form	200	1	2/60

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–16297 Filed 7–8–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16ASR]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Persistence of Zika Virus in Semen and Urine of Adult Men in the United States with Confirmed Zika Virus Infection—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Zika virus is an arthropod-borne flavivirus that has recently emerged in the Americas. Maternal infection has been linked to congenital microcephaly, fetal loss, and other adverse reproductive health outcomes. Although spread primarily by mosquitoes, recent reports have highlighted the potential for sexual transmission of Zika virus through the semen of infected men. Detection of viral RNA in semen 62 days after illness onset has been reported; however the frequency and duration of virus shedding is largely unknown. Information on these parameters is needed urgently to better inform public health recommendations, particularly for couples contemplating pregnancy.

This study will fill gaps in the scientific knowledge base for Zika virus regarding the persistence and transmissibility of Zika virus in body fluids, and determine the frequency and duration of Zika virus shedding in semen and urine of infected men. Minimal health information and specimens from consenting men with recent Zika virus infection will be collected once every two weeks for up to 6 months post onset of symptoms (or up to 12 collections). Specimens will be tested for Zika RNA by reverse transcriptase polymerase chain reaction assay (RT–PCR) at CDC; those testing positive may be further evaluated by virus isolation techniques. Zika virus disease is a nationally notifiable condition, and participants will be recruited through contact with CDC personnel. Urine and semen specimens will be self-collected using home collection kits, a short questionnaire will be self-administered, and participants will be compensated for their time. Results of testing will be provided to participants at the conclusion of testing. The results of this study are expected to have immediate implications for public health recommendations and disease prevention.

This is a prospective, descriptive cohort study. The prospective nature of the proposed cohort study allows for determining the persistence of shedding Zika virus in semen and urine through serial specimen collection from individuals with confirmed Zika virus.

The results of this study will be of great relevance to provide evidence-based information to circumvent Zika virus transmission. They will inform the development of recommendations used in the current epidemic setting, as well as in future Zika virus situations. Results and analysis will be used to update and refine relevant counseling messages and recommendations.

Potential products include scientific abstracts and manuscripts, presentations, and guidance documents.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 134.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public	Introductory Survey	250	1	20/60
	Follow-up survey	250	12	1/60

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–16298 Filed 7–8–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–367]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 10, 2016:

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *or*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Program—Monthly and Quarterly Drug Reporting Format; *Use:* Labelers transmit drug product and pricing data to CMS within 30 days after the end of each calendar month and quarter. CMS calculates the unit rebate amount (URA) and the unit rebate offset amount (UROA) for each new drug application (NDC) and distributes to all State Medicaid agencies. States use the URA to invoice the labeler for rebates and the UROA to report onto the CMS–64. The monthly data is used to calculate Federal Upper Limit (FUL) prices for applicable drugs and for states that opt to use this data to establish their pharmacy reimbursement methodology. *Form Number:* CMS–367 (OMB control number: 0938–0578); *Frequency:* Monthly and Quarterly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 610; *Total Annual Responses:* 12,810; *Total Annual Hours:* 3,618,703. (For policy questions regarding this collection contact Samone Angel at 410–786–1123.)

Dated: July 5, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–16221 Filed 7–8–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0578]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information relating to general licensing provisions for biologics license applications (BLAs), changes to an approved application, labeling, revocation and suspension, postmarketing studies status reports, and Form FDA 356h.

DATES: Submit electronic or written comments on the collection of information by September 9, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0578 for "General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports and Form FDA 356h." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Form FDA 356h

OMB Control No. 0910–0338—Extension

Under section 351 of the Public Health Services Act (the PHS Act) (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and approval before marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to ensure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations in part 601 (21 CFR part 601).

Section 130(a) of the Food and Drug Administration Modernization Act (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a new provision (section 506B of the FD&C Act (21 U.S.C. 356b)) requiring reports of postmarketing studies for approved human drugs and licensed biological products. Section 506B of the FD&C Act provides FDA with additional authority to monitor the progress of postmarketing studies that applicants have made a commitment to conduct and requires the Agency to make publicly available information that pertains to the status of these studies. Under section 506B(a) of the FD&C Act, applicants that have committed to conduct a postmarketing study for an approved human drug or licensed biological product must submit to FDA a status report of the progress of the study or the reasons for the failure of the applicant to conduct the study. This report must be submitted within 1 year after the U.S. approval of the application and then annually until the study is completed or terminated.

A summary of the collection of information requirements follows:

Section 601.2(a) requires a manufacturer of a biological product to submit an application on forms prescribed for such purposes with accompanying data and information, including certain labeling information, to FDA for approval to market a product in interstate commerce. The container and package labeling requirements are provided under §§ 610.60 through 610.65 (21 CFR 610.60 through 610.65). The estimate for these regulations is included in the estimate under § 601.2(a) in table 1.

Section 601.5(a) requires a manufacturer to submit to FDA notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) requires the manufacturer to notify selling agents and distributors upon suspension of its license, and provide FDA of such notification.

Section 601.12(a)(2) requires, generally, that the holder of an approved BLA must assess the effects of a manufacturing change before distributing a biological product made with the change. Section 601.12(a)(4) requires, generally, that the applicant must promptly revise all promotional labeling and advertising to make it consistent with any labeling changes implemented. Section 601.12(a)(5) requires the applicant to include a list of all changes contained in the supplement or annual report; for supplements, this list must be provided in the cover letter. The burden estimates for § 601.12(a)(2) are included in the estimates for supplements (§§ 601.12(b) and (c)) and annual reports (§ 601.12(d)). The burden estimates for § 601.12(a)(4) are included in the estimates under 601.12(f)(4) in table 1.

Sections 601.12(b)(1) and (3), (c)(1), (3), and (5), and (d)(1) and (3) require applicants to follow specific procedures to submit information to FDA of any changes, in the product, production process, quality controls, equipment, facilities, or responsible personnel established in an approved license application. The appropriate procedure depends on the potential for the change to have a substantial, moderate, or minimal adverse effect on the identity, strength, quality, purity, or potency of the products as they may relate to the safety or effectiveness of the product. Under § 601.12(b)(4), an applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship of the applicant. The burden estimate for § 601.12(b)(4) is minimal and included in the estimate under § 601.12(b)(1) and (3) in table 1.

Section 601.12(e) requires applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval before distributing the product. Section 601.12(f)(1) through (3) requires applicants to follow specific procedures to report certain labeling changes to FDA. Section 601.12(f)(4) requires applicants to report to FDA advertising and promotional labeling and any changes.

Under § 601.14, the content of labeling required in 21 CFR 201.100(d)(3) must be in electronic format and in a form that FDA can process, review, and archive. This requirement is in addition to the provisions of §§ 601.2(a) and 601.12(f). The burden estimate for § 601.14 is minimal and included in the estimate under §§ 601.2(a) (BLAs) and 601.12(f)(1) through (3) (labeling supplements and annual reports) in table 1.

Section 601.45 requires applicants of biological products for serious or life-threatening illnesses to submit to the Agency for consideration, during the pre-approval review period, copies of all promotional materials, including promotional labeling as well as advertisements.

In addition to §§ 601.2 and 601.12, there are other regulations in 21 CFR parts 640, 660, and 680 that relate to information to be submitted in a license application or supplement for certain blood or allergenic products as follows: §§ 640.6; 640.17; 640.21(c); 640.22(c); 640.25(c); 640.56(c); 640.64(c); 640.74(a) and (b)(2); 660.51(a)(4); and 680.1(b)(2)(iii) and (d).

In table 1, the burden associated with the information collection requirements in the applicable regulations is included in the burden estimate for §§ 601.2 and/or 601.12. A regulation may be listed under more than one subsection of § 601.12 due to the type of category under which a change to an approved application may be submitted.

There are also additional container and/or package labeling requirements for certain licensed biological products including: § 640.74(b)(3) and (4) for Source Plasma Liquid; § 640.84(a) and (c) for Albumin; § 640.94(a) for Plasma Protein Fraction; § 660.2(c) for Antibody to Hepatitis B Surface Antigen; § 660.28(a), (b), and (c) for Blood Grouping Reagent; § 660.35(a), (c through g), and (i through m) for Reagent Red Blood Cells; § 660.45 for Hepatitis B Surface Antigen; and § 660.55(a) and (b) for Anti-Human Globulin. The burden associated with the additional labeling requirements for submission of a license application for these certain biological products is minimal because the majority of the burden is associated with the requirements under §§ 610.60 through 610.65 or 21 CFR 809.10. Therefore, the burden estimates for these regulations are included in the estimate under §§ 610.60 through 610.65 in table 1. The burden estimates associated with § 809.10 are approved under OMB control number 0910–0485.

Section 601.27(a) requires that applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information. Section 601.27(b) provides that an applicant may request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a) until after licensing the product for use in adults. Section 601.27(c) provides that an applicant may request a full or partial waiver of the requirements under § 601.27(a) with adequate justification. The burden estimates for § 601.27(a) are included in the burden estimate under § 601.2(a) in table 1 since these regulations deal with information to be provided in an application.

Section 601.28 requires sponsors of licensed biological products to submit the information in § 601.28(a), (b), and (c) to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drug Evaluation and Research (CDER) each year, within 60 days of the anniversary date of approval of the license. Section 601.28(a) requires sponsors to submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Section 601.28(b) requires sponsors to submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. Section 601.28(c) requires sponsors to submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, on or behalf of, the applicant. If the postmarketing studies were required or agreed to, the status of these studies is to be reported under § 601.70 rather than under this section.

Sections 601.33 through 601.35 clarify the information to be submitted in an application to FDA to evaluate the safety and effectiveness of radiopharmaceuticals intended for in vivo administration for diagnostic and monitoring use. The burden estimates for §§ 601.33 through 601.35 are included in the burden estimate under § 601.2(a) in table 1 since these regulations deal with information to be provided in an application.

Section 601.70(b) requires each applicant of a licensed biological product to submit annually a report to FDA on the status of postmarketing studies for each approved product application. Each annual postmarketing status report must be accompanied by a completed transmittal Form FDA 2252 (Form FDA 2252 approved under OMB control number 0910–0001). Under § 601.70(d), two copies of the annual report shall be submitted to FDA.

Sections 601.91 through 601.94 concern biological products for which human efficacy studies are not ethical or feasible. Section 601.91(b)(2) requires, in certain circumstances, such postmarking restrictions as are needed to ensure the safe use of the biological product. Section 601.91(b)(3) requires applicants to prepare and provide labeling with relevant information to patients or potential patients for biological products approved under part 601, subpart H, when human efficacy studies are not ethical or feasible (or based on evidence of effectiveness from studies in animals). Section 601.93 provides that biological products approved under subpart H are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products. Section 601.94 requires applicants under subpart H to submit to the Agency for consideration during preapproval review period copies of all promotional materials including promotional labeling as well as advertisements. Under §§ 601.91(b)(2) and 601.93, any potential postmarketing reports and/or recordkeeping burdens would be included under the adverse experience reporting (AER) requirements under 21 CFR part 600 (OMB control number 0910–0308). Therefore, any burdens associated with these requirements would be reported under the AER information collection requirements (OMB control number 0910–0308). The burden estimate for § 601.91(b)(3) is included in the estimate under §§ 610.60 through 610.65.

Section 610.9(a) requires the applicant to present certain information, in the form of a license application or supplement to the application, for a modification of any particular test method or manufacturing process or the conditions which it is conducted under the biologics regulations. The burden estimate for § 610.9(a) is included in the estimate under §§ 601.2(a) and 601.12(b) and (c) in table 1.

Under § 610.15(d), the Director of CBER or the Director of CDER may approve, as appropriate, a manufacturer's request for exceptions or alternatives to the regulation for constituent materials. Manufacturers seeking approval of an exception or alternative must submit a request in writing with a brief statement describing the basis for the request and the supporting data.

Section 640.120 requires licensed establishments to submit a request for an exception or alternative to any requirement in the biologics regulations regarding blood, blood components, or blood products. For licensed establishments, a request for an exception or alternative must be submitted in accordance with § 601.12; therefore, the burden estimate for § 640.120 is included in the estimate under § 601.12(b) in table 1.

Section 680.1(c) requires manufacturers to update annually their license file with the list of source materials and the suppliers of the materials. Section 680.1(b)(3)(iv) requires manufacturers to notify FDA when certain diseases are detected in source materials.

Sections 600.15(b) and 610.53(d) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 606.110(b) (21 CFR 606.110(b)) requires the submission of a request for approval to perform plasmapheresis of donors who do not meet certain donor requirements for the collection of plasma containing rare antibodies. Under §§ 600.15(b), 610.53(d), and 606.110(b), a request for an exemption or modification to the requirements would be submitted as a supplement. Therefore, the burden hours for any submissions under §§ 600.15(b), 610.53(d), and 606.110(b) are included in the estimates under § 601.12(b) in table 1.

In July 1997, FDA revised Form FDA 356h "Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use" to harmonize application procedures between CBER and CDER. The application form serves primarily as a checklist for firms to gather and submit certain information to FDA. As such, the form, now entitled "Application to Market a New or Abbreviated New Drug or Biologic for Human Use," helps to ensure that the application is complete and contains all the necessary information so that delays due to lack of information may be eliminated. In addition, the form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. The estimated burden hours for nonbiological product submissions to CDER using FDA Form 356h are approved under OMB control number 0910–0001 (an estimated 3,200 submissions × 24 hours = 76,800 hours).

For advertisements and promotional labeling (*e.g.*, circulars, package labels, container labels, etc.) and labeling changes, manufacturers of licensed biological products may submit to CBER or CDER Form FDA 2253. In August of 1998, FDA revised and harmonized Form FDA 2253 so the form may be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The revised, harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted, clarifies the intended audience for the advertisements or promotional labeling (*e.g.*, consumers, professionals, news services), and helps ensure that the submission is complete. Form FDA 2253 can also be submitted electronically. Form FDA 2253 is approved under OMB control number 0910–0001.

Respondents to this collection of information are manufacturers of biological products. Under tables 1 and 2, the numbers of respondents are based on the estimated annual number of manufacturers that submitted the required information to FDA or the number of submissions FDA received in fiscal year (FY) 2015. Based on information obtained from FDA's database systems, there are an estimated 391 licensed biologics manufacturers. The total annual responses are based on the estimated number of submissions (*i.e.*, license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) for a particular product received annually by FDA. The hours per response are based on information provided by industry and past FDA experience with the various submissions or notifications. The hours per response include the time estimated to prepare the various submissions or notifications to FDA, and, as applicable, the time required to fill out the appropriate form and collate the documentation. Additional information regarding these estimates is provided below as necessary.

Under §§ 601.2 and 601.12, the estimated hours per response are based on the average number of hours to submit the various submissions. The estimated average number of hours is based on the range of hours to complete a very basic application or supplement and a complex application or supplement.

Under section 601.6(a), the total annual responses are based on FDA estimates that establishments may notify an average of 20 selling agents and distributors of such suspension, and provide FDA of such notification. The number of respondents is based on the estimated annual number of suspensions of a biologic license. In table 1, FDA is estimating one in case a suspension occurs.

Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use Form FDA 2253 to submit advertising and promotional labeling (which can include multiple pieces). Based on information obtained from FDA's database system, there were an estimated 11,676 submissions using Form FDA 2253 of advertising and promotional labeling from 114 respondents.

Under §§ 601.28 and 601.70(b), FDA estimates that it takes an applicant approximately 24 hours (8 hours per study × 3 studies) annually to gather, complete, and submit the appropriate information for each postmarketing status report (approximately two to four studies per report) and the accompanied transmittal Form FDA 2252. Included in these 24 hours is the time necessary to prepare and submit two copies of the annual progress report of postmarketing studies to FDA under § 601.70(d). For FY 2015, there were 139 reports from 82 respondents.

Under § 610.15(d), FDA has received no submissions since the implementation of the final rule in April 2011. Therefore, FDA is estimating 1 respondent and 1 annual request to account for a possible submission to CBER or CDER of a request for an exception or alternative for constituent materials under § 610.15(d).

There were a total of 2,777 amendments to an unapproved application or supplement and resubmissions submitted using Form FDA 356h.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours[10]
601.2(a)[2], 610.60 through 610.65[3]	356h	28	1.36	38	860	32,680
601.5(a)	N/A	12	0.75	9	0.33 (20 minutes)	3
601.6(a)	N/A	1	1	1	1	1
601.12(a)(5)	N/A	537	24.41	13,108	1	13,108
601.12(b)(1)/(b)(3)/(e)	356h[2]	164	3.66	600	80	48,000
601.12(c)(1)/(c)(3)[5]	356h[2]	120	4.78	574	50	28,700
601.12(c)(5)	356h[2]	7	1.14	8	50	400
601.12(d)(1)/(d)(3)[6]/(f)(3)[8]	356h[2]	246	3.34	822	24	19,728
601.12(f)(1)[7]	2253	72	1.93	139	40	5,560
601.12(f)(2)[7]	2253	60	1.82	109	20	2,180
601.12(f)(4)/601.45[9]	2253	114	102.42	11,676	10	116,670
601.27(b)	N/A	20	16.50	330	24	7,920
601.27(c)	N/A	12	1.08	13	8	104
601.70(b) and (d)/601.28	2252	82	1.70	139	24	3,336
610.15(d)	N/A	1	1	1	1	1
680.1(c)	N/A	9	1	9	2	18
680.1(b)(3)(iv)	N/A	1	1	1	2	2
Amendments/Resubmissions	356h	125	22.22	2,777	20	55,540
Total						333,951

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The reporting requirements under §§ 601.14, 601.27(a), 601.33, 601.34, 601.35, 610.9(a), 640.17, 640.25(c), 640.56(c), 640.74(b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) are included in the estimate under § 601.2(a).

[3] The reporting requirements under §§ 601.93(b)(3), 640.70(a), 640.74(b)(3) and (4), 640.84(a) and (c), 640.94(a), 660.2(c), 660.28(a), (b), and (c), 660.35(a), (c through g), and (i through m), 660.45, and 660.55(a) and (b) are included under §§ 610.60 through 610.65.

[4] The reporting requirements under §§ 601.12(a)(2) and (b)(4), 600.15(b), 610.9(a), 610.53(d), 606.110(b), 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 640.120, and 680.1(d) are included in the estimate under § 601.12(b).

[5] The reporting requirements under §§ 601.12(a)(2), 610.9(a), 640.17, 640.25(c), 640.56(c), and 640.74(b)(2) are included in the estimate under § 601.12(c).

[6] The reporting requirement under § 601.12(a)(2) is included in the estimate under § 601.12(d).

[7] The reporting requirement under § 601.14 is included in the estimate under § 601.12(f)(1) and (2).

[8] The reporting requirement under §§ 601.12(a)(4) and 601.14 is included in the estimate under § 601.12(f)(3).

[9] The reporting requirement under § 601.94 is included in the estimate under § 601.45.

[10] The numbers in this column have been rounded to the nearest whole number.

Under table 2, the estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Annual disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
601.6(a)	1	20	20	0.33 (20 minutes)	7

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Rounded to the nearest whole number.

Dated: July 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16352 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Controlling the Progression of Myopia: Contact Lenses and Future Medical Devices; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), in cosponsorship with the American Academy of Ophthalmology (AAO), American Academy of Optometry (AAOpt), American Association for Pediatric Ophthalmology and Strabismus (AAPOS), American Optometric Association (AOA), American Society of Cataract and Refractive Surgery (ASCRS), and Contact Lens Association of Ophthalmologists, Inc. (CLAO) is announcing a public workshop entitled "Controlling the Progression of Myopia: Contact Lenses and Future Medical Devices." The purpose of this workshop is to discuss the increasing prevalence of myopia, as well as suggested clinical trial design attributes for studies using contact lenses or other medical devices to control the progression of myopia.

DATES: The public workshop will be held on September 30, 2016, from 8 a.m. to 6 p.m. Pickup of materials will begin at 7:30 a.m.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room, (Rm. 1503), Silver Spring, MD, 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Michelle Tarver, Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2504, Silver Spring, MD 20993, 301–796–6884.

SUPPLEMENTARY INFORMATION:

I. Background

The prevalence of myopia in the United States has increased over the past decade with approximately 24 percent (over 30 million) of adults over 40 years of age being affected. Recent studies have found the overall prevalence of myopia to be 1.2 percent among non-Hispanic White children, 6.6 percent in African Americans, 3.7 percent in Hispanic, and 3.98 percent in Asian children. Pathologic myopia is the third most frequent cause of blindness due to retinal detachments or abnormal blood vessel growth. Given these potentially poor outcomes with high myopia, researchers have sought ways to prevent its development by starting interventions in childhood. The literature suggests that myopia progression is most rapid between 6 and 11 years of age and manipulating peripheral retinal image quality may be a treatment strategy to control axial length and therefore the progression of myopia. The results of studies conducted with specialized contact lenses, both rigid and soft, have indicated that this approach may reduce the rate of myopic progression in children. As research into myopia control is continuing at a rapid pace, accompanying potential safety and effectiveness questions also have emerged. To ensure that the studies conducted provide information that can adequately inform the regulatory review, we are conducting a workshop to answer questions about the appropriate clinical trial design and outcomes for these devices.

II. Topics for Discussion at the Public Workshop

Topics to be discussed at the public workshop include, but are not limited to the following topics:

- Myopia Demographics.
- Contact Lens Use and Safety in a Pediatric Population.
- Contact Lens Behaviors and Hygiene.
- Studies Conducted on Myopia Control Devices and Their Challenges.
- Regulation of Contact Lenses (Ref. 1).
- Patient/Caregiver Perspectives and the Role in Trial Design and Conduct (Refs. 2 and 3).

We will also have a panel discussion to address questions related to the design of these clinical trials.

Registration: Registration is $250 for members of AAO, AAOpt, AAPOS, AOA, ASCRS, or CLAO; and $400 for non-members and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online. The deadline for online registration is September 23, 2016, at 4 p.m. EDT. There will be no onsite registration on the day of the public workshop. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact Ms. Susan Monahan at *susan.monahan@fda.hhs.gov* or 301–796–5661 no later than September 16, 2016.

To register for the public workshop, please visit *http://www.cfom.info/meetings/myopia/.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, telephone number, and membership in the cosponsoring organizations. If there are any questions with registration, please contact Mrs. Bobbi Hahn at *bhahn@cfom.info.* Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Food may be purchased in advance for $45 on the registration Web site (*http://www.cfom.info/meetings/myopia/*). Food and beverages will also be available for purchase by participants during the workshop breaks.

For more information on the workshop, please see the FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Those without Internet access should contact Bobbi Hahn to register at 651–731–7257.

Streaming Webcast of the Public Workshop: The public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by September 23, 2016. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after September 23, 2016. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.* A link to the transcript will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

III. References

The following references are on display in the Division of Dockets Management (see *Transcripts*) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Premarket Notification [510(k)] Guidance Document for Class II Daily Wear Contact Lenses. U.S. Department of Health and Human Services, Food and Drug Administration. May 1994. *http://www.fda.gov/RegulatoryInformation/Guidances/ucm080928.htm.*
2. Guidance for Industry: Patient-Reported Outcome Measures: Use in Medical Product Development to Support Labeling Claims. U.S. Department of Health and Human Services, Food and Drug Administration. December 2009. *http://www.fda.gov/downloads/Drugs/.../Guidances/UCM193282.pdf.*
3. Draft Guidance: Patient Preference Information—Submission, Review in PMAs, HDE Applications, and *De Novo* Requests, and Inclusion in Device Labeling. U.S. Department of Health and Human Services, Food and Drug Administration. Posted March 2015. *http://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm446680.pdf.*

Dated: July 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16353 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–3787]

Information To Support a Claim of Electromagnetic Compatibility of Electrically-Powered Medical Device; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Device." This guidance describes the types of information that should be provided to support a claim of EMC in a premarket submission for an electrically powered medical device. Electromagnetic disturbance is electronic product radiation that may interfere with the performance of an electrically powered medical device in its intended environment (*i.e.,* cause an electromagnetic interference (EMI)). EMC assessment helps to ensure that a device is able to function in its intended environment without introducing excessive electromagnetic disturbances that might interfere with other devices.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–3787 for "Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Device." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Device" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Donald Witters, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 1130, Silver Spring, MD 20993–0002, 301–796–2483.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance to provide FDA's current thinking about the information that should be provided in a premarket submission to support a claim of EMC for an electrically powered medical device. The assessment of EMC helps to ensure that the risks associated with performance degradation of electrically powered medical devices due to EMI are adequately mitigated. This guidance is intended to ensure that clear and consistent information regarding medical device EMC are provided in premarket submissions to facilitate the review of submissions with EMC claims associated with safety and effectiveness.

The guidance includes information consistent with specifications described in FDA-recognized consensus national or international standards for EMC such as in the International Electrotechnical Commission (IEC) 60601–1–2: Edition 3: 2007–03, Medical Electrical Equipment—Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests; IEC 60601–1–2: Edition 4.0: 2014–01, Medical Electrical Equipment, Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Disturbances—Requirements and Tests; Association for the Advancement of Medical Instrumentation (AAMI)/American National Standards Institute (ANSI)/IEC 60601–1–2: 2007/(R) 2012 Medical Electrical Equipment—Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests; and AAMI/ANSI/IEC 60601–1–2: 2014, Medical Electrical Equipment—Part 1–2: General Requirements for Basic Safety and Essential Performance—Collateral Standard: Electromagnetic Disturbances—Requirements and Tests Standards that sponsors and manufacturers of electrically powered medical devices often reference.

The draft guidance of "Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Device" was posted November 2, 2015, for public comment, and the comment period ended on December 17, 2015. Three sets of comments were received during the comment period.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the information that should be provided to support a claim of EMC of electrically-powered medical device. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological

Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Information to Support a Claim of Electromagnetic Compatibility (EMC) of Electrically-Powered Medical Device" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400057 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231. The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 814, subpart H have been approved under OMB control number 0910–0332. The collections of information in the guidance document "Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and FDA Staff—Humanitarian Device Exemption (HDE) Regulation: Questions and Answers" have been approved under OMB control number 0910–0661.

Dated: July 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16350 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–N–0221; FDA–2012–N–0559; FDA–2015–N–3287; FDA–2015–N–3815; FDA–2007–D–0429; FDA–2012–N–0447; FDA–2011–D–0597; FDA–2011–D–0164; FDA–2013–N–0013; FDA–2011–N–0146; FDA–2014–N–1533; FDA–2011–N–0921; FDA–2015–N–2163]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Food Labeling: Notification Procedures for Statements on Dietary Supplements	0910–0331	6/30/2019
PHS Guideline on Infectious Disease Issues in Xenotransplantation	0910–0456	6/30/2019
MDUFMA Small Business Qualification Certification	0910–0508	6/30/2019
Electronic Submission of Medical Device Registration and Listing	0910–0625	6/30/2019
Guidance for Industry on Q & A Regarding Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement & Nonprescription Drug Consumer Protection Act	0910–0641	6/30/2019
Antimicrobial Animal Drug Distribution Reports and Recordkeeping	0910–0659	6/30/2019
Guidance for Industry on Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring	0910–0733	6/30/2019
Guidance for Industry on Safety Labeling Changes; Implementation of the Federal Food, Drug, and Cosmetic Act	0910–0734	6/30/2019
Accreditation of Third Party Certification Bodies to Conduct Food Safety Audits and Issue Certifications	0910–0750	6/30/2019
Sanitary Transportation of Human and Animal Food	0910–0773	6/30/2019
National Panel of Tobacco Consumer Studies	0910–0815	6/30/2019
Standards for the Growing, Harvesting, Packaging, and Holding of Produce for Human Consumption	0910–0816	6/30/2019
Hearing, Aging, and Direct-to-Consumer Television Advertisements	0910–0818	6/30/2019

Dated: July 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16349 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0242]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice for Positron Emission Tomography Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 10, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0667 and title “Current Good Manufacturing Practice for Positron Emission Tomography Drugs.” Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice for Positron Emission Tomography Drugs OMB Control Number 0910–0667—Extension

Positron emission tomography is a medical imaging modality involving the use of a unique type of radiopharmaceutical drug product. FDA’s Current Good Manufacturing Practice (CGMP) regulations at 21 CFR part 212 are intended to ensure that positron emission tomography (PET) drug products meet the requirements of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) regarding safety, identity, strength, quality, and purity. The CGMP requirements for PET drugs are issued under the provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). These CGMP requirements are designed to take into account the unique characteristics of PET drugs, including their short half-lives, and the fact that most PET drugs are produced at locations that are very close to the patients to whom the drugs are administered.

The CGMP regulations are intended to ensure that approved PET drugs meet the requirements of the FD&C Act as to safety, identity, strength, quality, and purity. The regulations address the following matters: Personnel and resources; quality assurance; facilities and equipment; control of components, in-process materials, and finished products; production and process controls; laboratory controls; acceptance criteria; labeling and packaging controls; distribution controls; complaint handling; and recordkeeping.

The CGMP regulations establish several recordkeeping requirements and a third-party disclosure requirement for the production of PET drugs. In making our estimates of the time spent in complying with these information collection requirements, we relied on informal communications we have had with PET producers, visits by our staff to PET facilities, and our familiarity with both PET and general pharmaceutical manufacturing practices.

In the **Federal Register** of December 29, 2015 (80 FR 81332), FDA published a 60-day notice requesting public comment on the proposed collection of information and the estimated annual burden for recordkeeping and third party disclosure. In response to the notice, FDA received several comments. The comments raised a number of issues that are discussed as follows.

(Comment 1) The comment disagreed with FDA’s estimate that 129 PET drug production facilities are required to comply with part 212. Based on its records, the comment said that approximately 150 facilities are subject to the PET CGMP requirements.

(Response) We have revised the burden estimates to account for 150 PET drug production facilities.

(Comment 2) The comment disagreed with FDA’s statement in section I of the December 29, 2015, **Federal Register** notice, “Investigational and Research PET Drugs.” The comment said that PET facilities devote resources to comply with USP 32 Chapter 823, and that FDA should estimate the recordkeeping burden under USP 32 Chapter 823.

(Response) FDA agrees with the comment that facilities incur a burden to comply with USP 32 Chapter 823. However, compliance with USP provisions is beyond the scope of this information collection, which only pertains to the requirements under part 212.

(Comment 3) The comment said FDA “averages” the burden across different categories of respondents and responses, and that this approach results in lower burden estimates. For example, the comment said that most recordkeeping will continue to be with a paper-based system and not an electronic system, and that the costs are different for each system. In addition, there are differences between the costs incurred by commercial and academic facilities.

(Response) All commercial PET drug facilities are currently utilizing electronic records for recordkeeping as well as paper-based records. Commercial PET drug manufacturers comprise approximately 90 percent of the manufacturing sites. Many academic PET facilities still use paper-based records. However, academic PET sites produce fewer batches for clinical use compared to commercial sites, and have fewer records. Sufficient resources and personnel are needed to perform the PET drug production activities, and academic PET drug sites limited in personnel and resources do bear more of the regulatory burden. After a firm’s recordkeeping process is established, the burdens are generally the same for entering records into an electronic system or a paper-based system. We question whether it is worthwhile to prepare separate estimates for commercial versus academic sites because academic sites are a small percentage of the total. Also, providing an average estimate is consistent with PRA requirements and, based on our calculations, the number of academic sites that apply for drug applications represents a small percentage.

(Comment 4) The comment questioned FDA’s methodology for determining the burden estimates, especially in table 2 where the actual burden may be underestimated “by a factor of 10 to 100.”

(Response) In estimating the time to comply with these information collection requirements, we relied on informal communications we have had with PET producers, visits by our staff to PET facilities, our familiarity with both PET and general pharmaceutical manufacturing practices, and the different facilities listed in new drug applications (NDAs) and abbreviated new drug applications (ANDAs) submitted to FDA for PET drugs. FDA is willing to consider any specific estimates to replace the data we used in the tables, just as we did for the 150 facilities submitted by the comment. However, other than the 150 facilities, the comment has submitted no other specific estimates upon which we could base alternative estimates.

(Comment 5) The comment said more time is needed to prepare its analysis of FDA's information collection burden for part 212. The comment also offered to work with FDA in the future to develop estimates that more fairly reflect the burden to comply with these regulations.

(Response) As required under the Paperwork Reduction Act (PRA), FDA provided 60 days for respondents to submit comment in response to the December 29, 2015, notice. Upon submission to OMB, respondents are afforded 30 additional days to submit comments. Finally, because FDA must seek OMB approval for any information collection at least every three years, respondents are invited to submit comments accordingly. FDA considers all comments it receives and continually seeks ways to improve its burden estimates as well as the efficiency of its information collection activities, including suggestions from PET drug producers and facilities in estimating the burden of the information collection in part 212. Any specific estimates submitted by PET drug producers and facilities subsequent to the comment period provided for under the PRA will be reviewed and considered by FDA for future renewals of this information collection.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours[2]
Batch Production and Control Records—212.20(c); 212.20(e); 212.50(a); 212.50(b).	150	1.71	256.5	20	5,130
Batch Production and Control Records—212.20(d) and (e); 212.50(c); 212.80(c).	150	501	75,150	0.50 (30 mins.)	37,575
Equipment and Facilities Records—212.20(c); 212.30(b); 212.50(d); 212.60(f).	150	15	2,250	1	2,250
Equipment and Facilities Records—212.30(b); 212.50(d); 212.60(f).	150	3,758	563,700	0.08 (5 mins.)	45,096
Records of Components, Containers, and Closures—212.20(c); 212.40(a); 212.40(b).	150	2	300	1	300
Records of Components, Containers, and Closures—212.40(e).	150	36	5,400	0.17 (10 mins.)	918
Laboratory Testing Records—212.20(c); 212.60(a); 212.60(b); 212.61(a); 212.70(a); 212.70(b); 212.70(d).	150	25	3,750	1	3,750
Laboratory Testing Records—212.60(g); 212.61(b); 212.70(d)(2); 212.70(d)(3).	150	501	75,150	0.17 (10 mins.)	12,776
Conditional Final Releases—212.70(f)	150	1	150	1	150
Out-of-Specification Investigations—212.20(c); 212.71(a); 212.71(b).	150	36	5,400	1	5,400
Reprocessing Procedures—212.20(c); 212.71(d)	150	1	150	1	150
Distribution Records—212.20(c); 212.90(a); 212.90(b)	150	501	75,150	0.25 (15 mins.)	18,788
Complaints—212.20(c); 212.100(a)	150	1	150	1	150
Complaints—212.100(b); 212.100(c)	150	1	150	0.50 (30 mins.)	75
Total					132,508

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Number rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN[1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours[2]
Sterility Test Failure Notices—212.70(e)	150	.25	37.5	1	38

[1] There are no capital costs or operating and maintenance costs associated with this information collection.
[2] Number rounded to the nearest whole number.

I. Investigational and Research PET Drugs

Section 212.5(b)(2) provides that for investigational PET drugs produced under an investigational new drug (IND) and research PET drugs produced with approval of a Radioactive Drug Research Committee (RDRC), the requirement under the FD&C Act to follow current good manufacturing practice is met by complying with the regulations in part 212 or with USP 32 Chapter 823. We believe that PET production facilities producing drugs under INDs and RDRCs are currently substantially complying with the recordkeeping requirements of USP 32 Chapter 823 (see section 121(b) of the Modernization Act), and accordingly, we do not estimate any recordkeeping burden for this provision.

II. Batch Production and Control Records

Sections 212.20(c) through (e), 212.50(a) through (c), and 212.80(c) set forth requirements for batch and production records as well as written control records. We estimate that it would take approximately 20 hours annually for each PET production facility to prepare and maintain written production and control procedures and to create and maintain master batch records for each PET drug produced. We also estimate that there will be a total of approximately 256.5 PET drugs produced, with a total recordkeeping burden of approximately 5,130 hours. We estimate that it would take a PET production facility an average of 30 minutes to complete a batch record for each of approximately 501 batches. Our estimated burden for completing batch records is approximately 37,575 hours.

III. Equipment and Facilities Records

Sections 212.20(c), 212.30(b), 212.50(d), and 212.60(f) contain requirements for records dealing with equipment and physical facilities. We estimate that it would take approximately 1 hour to establish and maintain these records for each piece of equipment in each PET production facility. We estimate that the total burden for establishing procedures for these records would be approximately 2,250 hours. We estimate that recording maintenance and cleaning information would take approximately 5 minutes a day for each piece of equipment, for a total recordkeeping burden of approximately 45,096 hours.

IV. Records of Components, Containers, and Closures

Sections 212.20(c) and 212.40(a), (b), and (e) contain requirements on records regarding receiving and testing of components, containers, and closures. We estimate that the annual burden for establishing these records would be approximately 300 hours. We estimate that each facility would receive approximately 36 shipments annually and would spend approximately 10 minutes per shipment entering records. The annual burden for maintaining these records would be approximately 918 hours.

V. Process Verification

Section 212.50(f)(2) requires that any process verification activities and results be recorded. Because process verification is only required when results of the production of an entire batch are not fully verified through finished-product testing, we believe that process verification will be a very rare occurrence, and we do not estimate any recordkeeping burden for documenting process verification.

VI. Laboratory Testing Records

Sections 212.20(c), 212.60(a), (b), and (g), 212.61(a) and (b), and 212.70(a), (b), and (d) set out requirements for documenting laboratory testing and specifications referred to in laboratory testing, including final release testing and stability testing. Each PET drug production facility will need to establish procedures and create forms for the different tests for each product they produce. We estimate that it will take each facility an average of 1 hour to establish procedures and create forms for one test. The estimated annual burden for establishing procedures and creating forms for these records is approximately 3,750 hours, and the associated annual burden for recording laboratory test results is approximately 12,776 hours.

VII. Sterility Test Failure Notices

Section 212.70(e) requires PET drug producers to notify all receiving facilities if a batch fails sterility tests. We believe that sterility test failures might occur in only 0.05 percent of the batches of PET drugs produced each year. Therefore, we have estimated in table 2 that each PET drug producer will need to provide approximately 0.25 sterility test failure notices per year to receiving facilities. The notice would be provided using email or fax transmission and should take no more than 1 hour.

VIII. Conditional Final Releases

Section 212.70(f) requires PET drug producers to document any conditional final releases of a product. We believe that conditional final releases will be fairly uncommon, but for purposes of the PRA, we estimated that each PET production facility would have one conditional final release a year and would spend approximately 1 hour documenting the release and notifying receiving facilities. The estimate of one conditional final release per year per facility is an appropriate average number because many facilities may have no conditional final releases while others might have only a few.

IX. Out-of-Specification Investigations

Sections 212.20(c) and 212.71(a) and (b) require PET drug producers to establish procedures for investigating products that do not conform to specifications and conduct these investigations as needed. We estimate that it will take approximately 1 hour annually to record and update these procedures for each PET production facility. We also estimate, for purposes of the PRA, that 36 out-of-specification investigations would be conducted at each facility each year and that it would take approximately 1 hour to document the investigation, which results in an annual burden of 5,400 hours.

X. Reprocessing Procedures

Sections 212.20(c) and 212.71(d) require PET drug producers to establish and document procedures for reprocessing PET drugs. We estimate that it will take approximately 1 hour a year to document these procedures for each PET production facility. We do not estimate a separate burden for recording the actual reprocessing, both because we believe it would be an uncommon event and because the recordkeeping burden has been included in our estimate for batch production and control records.

XI. Distribution Records

Sections 212.20(c) and 212.90(a) require that written procedures regarding distribution of PET drug products be established and maintained. We estimate that it will take approximately 1 hour annually to establish and maintain records of these procedures for each PET production facility. Section 212.90(b) requires that distribution records be maintained. We estimate that it will take approximately 15 minutes to create an actual distribution record for each batch of PET drug products, with a total burden of approximately hours for all PET producers.

XII. Complaints

Sections 212.20(c) and 212.100 require that PET drug producers establish written procedures for dealing with complaints, as well as document how each complaint is handled. We estimate that establishing and maintaining written procedures for complaints will take approximately 1 hour annually for each PET production facility and that each facility will receive approximately one complaint a year and will spend approximately 30 minutes recording how the complaint was addressed.

Dated: July 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16360 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1267]

Compounded Drug Products That Are Essentially Copies of Approved Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Compounded Drug Products That Are Essentially Copies of Approved Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act." For a drug product compounded by an outsourcing facility to qualify for the exemptions under section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act), it must not be essentially a copy of one or more approved drug products and must meet the other conditions in section 503B. This guidance sets forth FDA's policies concerning the "essentially a copy" provision of section 503B.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work to finalize the guidance, submit either electronic or written comments on this draft guidance by October 11, 2016. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by August 10, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1267 for "Compounded Drug Products That Are Essentially Copies of Approved Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues to the Office of Management and Budget in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or email to *oira_submission@omb.eop.gov.* All comments should be identified with the title, "Compounded Drug Products That Are Essentially Copies of Approved Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act."

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sara Rothman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Compounded Drug Products That Are Essentially Copies of Approved Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act." In 2013, the Drug Quality and Security Act, created a new section 503B of the Act, which describes a new category of compounders called "outsourcing facilities." Section 503B of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility to qualify for exemptions from the following three sections of the FD&C Act:

- Section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning labeling of drugs with adequate directions for use);
- Section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)); and
- Section 582 (21 U.S.C. 360eee–1) (concerning drug supply chain security requirements).

One of the conditions that must be met for a compounded drug product to qualify for the exemptions under section 503B of the Act is that "the drug is not essentially a copy of one or more approved drugs" (section 503B(a)(5)).

Section 503B(d)(2) defines "essentially a copy of an approved drug" as:

- A drug that is identical or nearly identical to an approved drug, or a marketed drug not subject to section 503(b) and not subject to approval in an application submitted under section 505, unless, in the case of an approved drug, the drug appears on the drug shortage list in effect under section 506E at the time of compounding, distribution, and dispensing (section 503B(d)(2)(A)); or
- A drug, a component of which is a bulk drug substance that is a component of an approved drug or a marketed drug that is not subject to section 503(b) and not subject to approval in an application submitted under section 505, unless there is a change that produces for an individual patient a clinical difference, as determined by the prescribing practitioner, between the compounded drug and the comparable approved drug (section 503B(d)(2)(B)).

This guidance sets forth FDA's policies concerning the "essentially a copy" provision of section 503B of the FD&C Act.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the "essentially a copy" provision of section 503B of the FD&C Act. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this document, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Under the draft guidance, pursuant to section 503B(d)(2)(B) of the FD&C Act, if an outsourcing facility compounds a drug, the component of which is a bulk drug substance that is a component of an approved drug, there must be a change that produces a clinical difference for an individual patient as determined by the prescribing practitioner. If an outsourcing facility intends to rely on such a determination to establish that a compounded drug is not essentially a copy of an approved drug, the outsourcing facility should ensure that the determination is documented on the prescription or order (which may be a patient-specific prescription or a non-patient specific order) for the compounded drug.

If a prescription or order does not make clear that the determination required by section 503B(d)(2)(B) has been made, the outsourcing facility may contact the prescriber or healthcare facility, and if the prescriber or healthcare facility confirms it, make a notation on the prescription or order that the prescriber has determined that the compounded product contains a change that produces a clinical difference for patient(s). The date of the conversation with the healthcare facility or prescriber should be included on the prescription or order.

We estimate that annually a total of approximately 40 outsourcing facilities ("number of respondents" in table 1, line 1) will consult a prescriber to determine whether he or she has made a determination that the compounded drug has a change that produces a clinical difference for an individual patient as compared to the comparable approved drug and that outsourcing facilities will document this determination on approximately 4,000 prescriptions or orders for compounded drugs ("total annual disclosures" in table 1, line 1). We estimate that the consultation between the outsourcing facility and the prescriber or health care facility and adding a notation to each prescription or order that does not already document this determination will take approximately 3 minutes per prescription or order.

In addition, if the outsourcing facility compounded a drug that is identical or nearly identical to an approved drug product that appeared on FDA's drug shortage list, the outsourcing facility should maintain documentation (*e.g.*, a notation on the order for the compounded drug) regarding the status of the drug on FDA's drug shortage list at the time of compounding, distribution and dispensing. We estimate that a total of approximately 30 outsourcing facilities ("number of respondents" in table 1, line 2) will document this information on approximately 3,000 prescriptions or orders for compounded drugs ("total annual disclosures" in table 1, line 2). We estimate that checking FDA's drug shortage list and documenting this information will take approximately 2 minutes per prescription or order.

An outsourcing facility should also maintain records of prescriptions or orders including notations that a prescriber has determined that the compounded drug has a change that produces a clinical difference for an individual patient. Because the time, effort, and financial resources necessary to comply with this collection of information would be incurred by licensed pharmacists and licensed physicians in the normal course of their activities, it is excluded from the definition of "burden" under 5 CFR 1320.3(b)(2).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN[1]

Type of reporting	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Consultation between the outsourcing facility and prescriber or health care facility, and the notation on the prescription or order documenting the prescriber's determination of clinical difference.	40	100	4,000	3 minutes	200
Checking FDA's drug shortage list and documenting on the prescription that the drug is in shortage.	30	100	3,000	2 minutes	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16362 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1309]

Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled "Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act." To qualify for exemptions under section 503A of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), a drug product must be compounded by a licensed pharmacist or physician who does not compound regularly or in inordinate amounts any drug products that are essentially copies of a commercially available drug product. This guidance sets forth FDA policies regarding this provision of section 503A, including the terms "commercially available," "essentially a copy of a commercially available drug," and "regularly or in inordinate amounts."

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work to finalize the guidance, submit either electronic or written comments on this draft guidance by October 11, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1309 for "Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sara Rothman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act." Section 503A (21 U.S.C. 353a), added to the FD&C Act by the Food and Drug Administration Modernization Act in 1997, describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist in a State-licensed pharmacy or Federal facility, or by a licensed physician, to be exempt from the following three sections of the FD&C Act:

- Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice requirements);
- section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and
- section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

One of the conditions that must be met for a compounded drug product to qualify for the exemptions under section 503A of the FD&C Act is that it must be compounded by a licensed pharmacist or a licensed physician that does not compound regularly or in inordinate amounts (as defined by the Secretary) any drug products that are essentially copies of a commercially available drug product (see section 503A(b)(1)(D)).

The statute further states that the term "essentially a copy of a commercially available drug product" does not include a drug product in which there is a change, made for an identified individual patient, which produces for that patient a significant difference, as determined by the prescribing practitioner, between the compounded drug and the comparable commercially available drug (see section 503A(b)(2)).

This draft guidance sets forth the FDA's proposed policies regarding this provision of section 503A, including the terms "commercially available," "essentially a copy of a commercially available drug," and "regularly or in inordinate amounts."

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the compounded drug products that are essentially copies of a commercially available drug product under section 503A of the FD&C Act. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this document, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Under the draft guidance, pursuant to section 503A(b)(2) of the FD&C Act, a compounded drug product is not essentially a copy of a commercially available drug product if a change is made for an identified individual patient, and the prescribing practitioner has determined that the change will produce a significant difference for that patient. If a compounder intends to rely on such a determination to establish that a compounded drug is not essentially a copy of a commercially available drug product, the compounder should ensure that the determination is documented on a prescription.

If a prescription does not make clear that the prescriber made the determination required by section 503A(b)(2), or a compounded drug is substituted for the commercially available product at the pharmacy, the compounder may contact the prescriber and if the prescriber confirms it, make a notation on the prescription that the compounded product contains a change that makes a significant difference for the patient. The notations should be as specific as those described in this document, and the date of the conversation with the prescriber should be included on the prescription.

We estimate that annually a total of approximately 3,444 compounders ("number of respondents" in table 1, line 1) will consult a prescriber to determine whether he or she has made a determination that the compounded drug has a change that produces a significant difference for a patient as compared to the comparable commercially available drug, and that the compounders will document this determination on approximately

172,200 prescription orders for compounded drugs (“total annual disclosures” in table 1, line 1). We estimate that the consultation between the compounder and the prescriber and adding a notation to each prescription that does not already document this determination will take approximately 3 minutes per prescription order.

In addition, if the drug was compounded because the approved product was not commercially available because it was on the FDA drug shortage list, the prescription or a notation on the prescription should note that it was on the drug shortage list and the date the list was checked. We estimate that a total of approximately 6,888 compounders (“number of respondents” in table 1, line 2) will document this information on approximately 344,400 prescription orders for compounded drugs (“total annual disclosures” in table 1, line 2). We estimate that checking FDA’s drug shortage list and documenting this information will take approximately 2 minutes per prescription order.

Compounders under section 503A should maintain records of the frequency in which they have compounded drug products that are essentially copies of commercially available drug products and the number of prescriptions that they have filled for compounded drug products that are essentially copies of commercially available drug products to document that such compounding has not been done “regularly” or in “inordinate amounts.” We estimate that a total of approximately 3,444 compounders (“number of recordkeepers” in table 1) will keep approximately 165,312 records (“total annual records”). We estimate that maintaining the records will take approximately 2 minutes per record.

A licensed pharmacist or physician seeking to compound a drug product under section 503A should also maintain records of prescriptions for identified individual patients including notations that a prescriber has determined that the compounded drug has a change that produces a significant difference for the identified patient. Because the time, effort, and financial resources necessary to comply with this collection of information would be incurred by licensed pharmacists and licensed physicians in the normal course of their activities, it is excluded from the definition of “burden” under 5 CFR 1320.3(b)(2). FDA understands that maintaining records of prescriptions for compounded drug products is part of the usual course of the practice of compounding and selling drugs and is required by States’ pharmacy laws and other state laws governing recordkeeping by health care professionals and health care facilities.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Type of reporting	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Consultation between the compounder and prescriber and the notation on the prescription documenting the prescriber’s determination of significant difference.	6,888	50	344,400	3 minutes	17,220
Checking FDA’s drug shortage list and documenting on the prescription that the drug is in shortage.	6,888	50	344,400	2 minutes	11,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of recordkeeping	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Records of frequency and number of prescriptions filled for compounded drugs that are essentially a copy.	3,444	48	165,312	2 minutes	5,510

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16361 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1673]

Updating Abbreviated New Drug Application Labeling After the Marketing Application for the Reference Listed Drug Has Been Withdrawn; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Updating ANDA Labeling After the Marketing Application for the Reference Listed Drug Has Been Withdrawn.” This draft guidance describes a process for updating labeling for abbreviated new drug applications (ANDAs) in cases where FDA has withdrawn approval of the new drug application (NDA) for the ANDA’s reference listed drug (RLD) for reasons other than safety or effectiveness. The process described in this guidance is intended to complement existing Agency authorities and processes.

DATES: Although you can comment on any guidance at any time (see 21 CFR

10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 9, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1673 for "Updating ANDA Labeling After the Marketing Application for the Reference Listed Drug Has Been Withdrawn; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Emily Helms Williams, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3381, *emily.helmswilliams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Updating ANDA Labeling After the Marketing Application for the Reference Listed Drug Has Been Withdrawn." This draft guidance describes a process for updating labeling for ANDAs in cases where FDA has withdrawn approval of the NDA for the ANDA's RLD for reasons other than safety or effectiveness.

A generic drug is required to have the same labeling as the RLD at the time of approval, except for changes required because of differences approved under a suitability petition (see section 505(j)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and 21 CFR 314.93) or because the generic drug and the RLD are "produced or distributed by different manufacturers" (see section 505(j)(2)(A)(v) of the FD&C Act and § 314.94(a)(8)(iv) (21 CFR 314.94(a)(8)(iv))). As a general matter, all holders of marketing applications for drug products have an ongoing obligation to ensure their product labeling is accurate, and not false or misleading. ANDA holders are expected to update their labeling after FDA has approved relevant changes to the labeling for the corresponding NDA RLD.

Where approval of an NDA RLD has been withdrawn, the NDA holder can no longer update labeling for the withdrawn RLD. The labeling of ANDAs that rely on the withdrawn RLD might eventually become inaccurate and outdated, resulting in labeling that is false and/or misleading, for example. Likewise, new original ANDAs that rely on the withdrawn RLD might include proposed labeling based on the last approved RLD labeling that includes outdated information that is false and/or misleading. This draft guidance clarifies that consistent with the statute, where the RLD is withdrawn, certain labeling changes may continue to be made for pending ANDAs and marketed ANDAs. This draft guidance sets forth a process for making such changes. The process described in this guidance is intended to complement existing Agency authorities and processes.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the process for updating ANDA labeling after approval of the NDA for the RLD has been withdrawn. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 314.94(a)(8) and 21 CFR 314.97 have been approved under OMB Control No. 0910–0001.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–16157 Filed 7–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0221–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0221, scheduled to expire on September 30, 2016. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before August 10, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0221 and document identifier HHS–OS–0990–0221–30D for reference.

Information Collection Request Title: Family Planning Annual Report: Forms and Instructions.

Abstract: The Office of Population Affairs within the Office of the Assistant Secretary for Health seeks to renew the currently approved Family Planning Annual Report (FPAR) data collection and reporting tool (OMB No. 0990–0221). This annual reporting requirement is for family planning services delivery projects authorized and funded by the title X Family Planning Program [''Population Research and Voluntary Family Planning Programs'' (Pub. L. 91–572)], which was enacted in 1970 as title X of the Public Health Service Act (section 1001; 42 U.S.C. 300). The FPAR data collection and reporting tool remains unchanged in this request to renew OMB approval to collect essential, annual data from title X grantees.

Likely Respondents: Respondents for this annual reporting requirement are centers that receive funding directly from OPA for family planning services authorized and funded under the title X Family Planning Program [''Population Research and Voluntary Family Planning Programs'' (Pub. L. 91–572)], which was enacted in 1970 as title X of the Public Health Service Act (section 1001 of title X of the Public Health Service Act, 42 United States Code [U.S.C.] 300).

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average annualized burden per response (hours)	Annualized total burden (hours)
Grantees	FPAR	93 grantees	1	36	3,348
Totals		93			3,348

Terry S. Clark,

Asst. Information Collection Clearance Officer.

[FR Doc. 2016–16300 Filed 7–8–16; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service Medical Staff Credentials and Privileges Files

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is submitting to the Office of Management and Budget (OMB) a request for an extension of a previously approved collection of information titled, ''Indian Health Service Medical Staff Credentials and Privileges Files,'' OMB Control Number 0917–0009, which expires August 31, 2016. This

proposed information collection project was previously published in the **Federal Register** (81 FR 23318) on April 20, 2016, and allowed 60 days for public comment. The IHS received no public comments regarding this collection. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." Type of Information Collection Request: Extension, without revision, of currently approved information collection, 0917–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." Form Numbers: 0917–0009. Need and Use of Information Collection: This collection of information is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: Physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS; (2) contractors who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Centers for Medicare and Medicaid Services, the Joint Commission, and other accrediting organizations require health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. In order to meet these standards, IHS health care facilities require all medical staff applicants to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: Former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, the Joint Commission standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining the licensure or certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is a Joint Commission requirement. Prior to the establishment of this Joint Commission requirement, the degree to which medical staff applications were maintained at all health care facilities in the United States that are verified for completeness and accuracy varied greatly across the Nation.

The application process has been streamlined and is using information technology to make the application electronically available on the Internet. The application may be found at the *IHS.gov* Web site address: *http://www.ihs.gov/IHM/index.cfm?module=dsp_ihm_pc_p3c1_ex#ManualExhibit3-1-A.*

Affected Public: Individuals and households.

Type of Respondents: Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of annual number of responses, Average burden per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hours
Application to Medical Staff	570	1	1.00 (60 mins)	570
Reference Letter	1,710	1	0.33 (20 mins)	570
Reappointment Request	190	1	1.00 (60 mins)	190
Ob-Gyn Privileges	20	1	1.00 (60 mins)	20
Internal Medicine	325	1	1.00 (60 mins)	325
Surgery Privileges	20	1	1.00 (60 mins)	20
Psychiatry Privileges	13	1	1.00 (60 mins)	13
Anesthesia Privileges	15	1	1.00 (60 mins)	15
Dental Privileges	150	1	0.33 (20 mins)	50
Psychology Privileges	30	1	0.17 (10 mins)	5
Audiology Privileges	7	1	0.08 (5 mins)	1
Podiatry Privileges	7	1	0.08 (5 mins)	1
Radiology Privileges	8	1	0.33 (20 mins)	3
Pathology Privileges	3	1	0.33 (20 mins)	1
Total	3,068			1,784

* For ease of understanding, burden hours are provided in actual minutes.

There are no capital costs, operating costs and/or maintenance costs to respondents.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate is logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

ADDRESSES: To request additional information, please contact Lisa Neel by one of the following methods:

- *Mail:* Lisa Neel, Program Manager, HIV Program, Office of Clinical and Preventive Services, Indian Health Service, 5600 Fishers Lane, Mail Stop: 08N06–A, Rockville, MD 20857.
- *Phone:* 301–443–4305.
- *Email: Lisa.Neel@ihs.gov.*
- *Fax:* 301–443–4305.

Direct Your Comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

Comment Due Date: Your comments regarding this information collection is best assured of having full effect if received within 30 days of the date of this publication.

Dated: June 29, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–16207 Filed 7–8–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, HHS.

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on July 26 and July 27, 2016. The DTAB will convene in both open and closed sessions over these two days.

On July 26, 2016 from 9:00 a.m. to 5:00 p.m. EDT, the meeting will be open to the public to provide an update on the status of the Mandatory Guidelines for Federal Workplace Drug Testing Programs for urine and oral fluid. A description of technical issues associated with hair testing will also be provided.

The public is invited to attend the open session in person or to listen via web conference. Due to the limited seating space and call-in capacity, registration is requested. Public comments are welcome. To register, make arrangements to attend, obtain the teleconference call-in numbers and access codes, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Advisory Committees' Web site at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or contact the CSAP DTAB Designated Federal Official, Brian Makela (see contact information below).

On July 27, 2016 between 9:00 a.m. and 2:00 p.m. E.D.T., the Board will meet in closed session to discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. This portion of the meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of DTAB members may be obtained as soon as possible after the meeting by accessing the SAMHSA Advisory Committees Web site, *http://www.nace.samhsa.gov/MeetingList.aspx,* or by contacting Brian Makela. The transcript for the open meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: July 26, 2016 from 9:00 a.m. to 5:00 p.m. E.D.T.: OPEN; July 27, 2016 from 9:00 a.m. to 2:00 p.m. E.D.T.: CLOSED.

Place: 7500 Old Georgetown Rd., Bethesda, Maryland 20814.

Contact: Brian Makela, Designated Federal Official, CSAP Drug Testing Advisory Board, 5600 Fishers Lane, Room 16N02B, Rockville, Maryland 20857, *Telephone:* 240–276–2600, *Email: brian.makela@samhsa.hhs.gov.*

Summer King,

Statistician.

[FR Doc. 2016–16358 Filed 7–8–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Confidentiality of Alcohol and Drug Abuse Patient Records—(OMB No. 0930–0092)—Revision

Statute (42 U.S.C. 290dd–2) and regulations (42 CFR part 2) require federally conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs to keep alcohol and drug abuse patient records confidential. Information requirements are (1) written disclosure to patients about Federal laws and regulations that protect the confidentiality of each patient, and (2) documenting "medical personnel" status of recipients of a disclosure to meet a medical emergency. Annual burden estimates for these requirements are summarized in the table below:

ANNUALIZED BURDEN ESTIMATES

	Annual number of respondents [1]	Responses per respondent	Total responses	Hours per response	Total hour burden
Disclosure					
42 CFR 2.22	11,770	147	[2] 1,725,625	.20	345,125
Recordkeeping					
42 CFR 2.51	11,770	2	23,540	.167	3,931
Total	11,770	....	1,749,165	....	349,056

[1] The number of publicly funded alcohol and drug facilities from SAMHSA's 2015 National Survey of Substance Abuse Treatment Services (N–SSATS).

[2] The average number of annual treatment admissions from SAMHSA's 2012–2014 Treatment Episode Data Set (TEDS).

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov*. Written comments should be received by September 9, 2016.

Summer King,

Statistician.

[FR Doc. 2016–16312 Filed 7–8–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0477]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal advisory committee working group meeting.

SUMMARY: A working group of the Merchant Marine Personnel Advisory Committee will meet to work on Task Statement 30, which asks the committee to evaluate utilizing military education, training, and assessment to satisfy national and STCW[1] credential requirements. The working group will specifically consider a military-to-mariner training and program/course approval workshop for Officer in Charge Navigation Watch and Officer in Charge Engineering Watch. These meetings will be open to the public.

DATES: The Merchant Marine Personnel Advisory Committee working group is scheduled to meet daily from August 2, 2016 to August 4, 2016 from 8 a.m. until 5:30 p.m. Central Daylight Time. Please note that these meetings may adjourn early if the working group has completed its business.

ADDRESSES: The meetings will be held at the U.S. Naval Station Great Lakes, 2121 Paul Jones St., Building 122, Great Lakes, IL 60088. Entrance to the Base must be made via the Naval Station Great Lakes Main Gate and government issued identification will be required. Please arrive at least 30 minutes early for processing. For further information about the meeting facilities, please contact Lieutenant Junior Grade Boris Kun at (703) 604–5310. Please be advised that all attendees are required to notify the Merchant Marine Personnel Advisory Committee Alternate Designated Federal Officer of your attendance no later than July 21, 2016 using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Alternate Designated Federal Officer as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the working group as listed in the "Agenda" section below. Written comments for distribution to working group members must be submitted no later than July 21, 2016, if you want the working group members to be able to review your comments before the meeting, and must be identified by docket number USCG–2016–0477. Written comments may be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov*. If you encounter technical difficulties, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov*, type USCG–2016–0477 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509, telephone 202–372–1445, fax 202–372–8382, or *Davis.J.Breyer@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, title 5 United States Code Appendix.

The Merchant Marine Personnel Advisory Committee was established under authority of section 310 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, title 46, United States Code, section 8108, and chartered under the provisions of the Federal Advisory Committee Act (title 5, United States Code, Appendix). The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the Coast Guard on matters relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards and other matters as assigned by the Commandant; shall review and comment on proposed Coast Guard regulations and policies relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards; may be given special assignments by the Secretary and may conduct studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and with State or local governments; shall advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

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[1] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

Agenda

Day 1

The agenda for the August 2, 2016 meeting is as follows:

(1) The working group will meet briefly to discuss Task Statement 30, Utilizing military education, training and assessment for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and U.S. Coast Guard Certifications; the purpose and goals of this intercessional; and the organization of this intercessional/workshop;

(2) Reports of working sub-groups. At the end of the day, the working sub-groups will report to the full working group on what was accomplished in their meetings. The full working group will not take action on these reports on this date. Any action taken as a result of this working group meeting will be taken on day 3 of the meeting.

(3) Public comment period.

(4) Adjournment of meeting.

Day 2

The agenda for the August 3, 2016 meeting is as follows:

(1) The working group will meet briefly to discuss Task Statement 30, Utilizing military education, training and assessment for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and U.S. Coast Guard Certifications; the purpose and goals of this intercessional for this date; and any adaptations to the organization of this intercessional;

(2) Reports of working sub-groups. At the end of the day, the working sub-groups will report to the full working group on what was accomplished in their meetings. The full working group will not take action on these reports on this date. Any action taken as a result of this working group meeting will be taken on day 3 of the meeting.

(3) Public comment period.

(4) Adjournment of meeting.

Day 3

The agenda for the August 4, 2016 meeting is as follows:

(1) The working group will meet briefly to discuss Task Statement 30, Utilizing military education, training and assessment for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers and U.S. Coast Guard Certifications; the purpose and goals of this intercessional for this date; and any adaptations to the organization of this intercessional;

(2) Reports of working sub-groups. The working sub-groups will report to the full working group on what was accomplished in their meetings. The full working group will not take action on these reports at this time. Any action taken as a result of this working group meeting will be taken after the public comment period.

(3) Public comment period.

(4) Preparation of the meeting report to the Committee.

(5) Adjournment of meeting.

A public comment period will be held during each day during the working group meeting concerning matters being discussed. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment periods may end before the prescribed ending times following the last call for comments.

Please contact Mr. Davis Breyer, listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker. Please note that the meeting may adjourn early if the work is completed.

Dated: July 6, 2016.

F.J. Sturm,

Acting Director, Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. 2016–16332 Filed 7–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2016–0035]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will meet in Boston, Massachusetts (MA). The meeting will be open to the public.

DATES: The Commercial Customs Operations Advisory Committee (COAC) will meet on Wednesday, July 27, 2016, from 12:30 p.m. to 4:30 p.m. EDT. Please note that the meeting may close early if the committee has completed its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

—For members of the public who plan to attend the meeting in person, please register by 5:00 p.m. EDT by July 22, 2016 either online at *https://apps.cbp.gov/te_reg/index.asp?w=78* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290. You must register prior to the meeting in order to attend the meeting in person.

—For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=79* by 5:00 p.m. EDT by July 22, 2016.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later need to cancel, please do so in advance of the meeting by accessing one (1) of the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=78* to cancel an in person registration, or *https://apps.cbp.gov/te_reg/cancel.asp?w=79* to cancel a webinar registration.

ADDRESSES: The meeting will be held at the Thomas P. O'Neill Federal Building, 10 Causeway Street, in the Auditorium, Boston, MA 02222. There will be signage posted directing visitors to the location of the meeting room.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Karmeshia Tuck, Office of Trade Relations, U.S. Customs and Border Protection at (202) 325–1030 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the "Agenda" section below.

Comments must be submitted in writing no later than July 22, 2016, and must be identified by Docket No. USCBP–2016–0035, and may be submitted by *one (1)* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290.
- *Mail:* Ms. Karmeshia Tuck, Office of Trade Relations, U.S. Customs and

Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number (USCBP–2016–0035) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2016–0035. To submit a comment, click the "Comment Now!" button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on July 27, 2016. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

FOR FURTHER INFORMATION CONTACT: Ms. Karmeshia Tuck, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1661; facsimile (202) 325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Agenda

The COAC will hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Exports Subcommittee will give an update on the Air, Ocean, and Rail Manifest Pilots, and discuss the progress of the Truck Manifest Sub-Working Group, which is coordinating with the 1 USG North American Single Window (NASW) Working Group. The Post Departure Filing (PDF) Working Group will discuss its Table Top exercise and additional feedback that it has been gathering from other interested stakeholders.

2. The Global Supply Chain Subcommittee will review and discuss recommendations related to the Pipeline Working Group and also provide an update on pilot discussions with industry. In addition, an update report on the progress of the Customs-Trade Partnership Against Terrorism (C–TPAT) Working Group that is reviewing and developing recommendations to update the C–TPAT minimum security criteria will be provided.

3. The One U.S. Government Subcommittee will discuss the progress of the North American Single Window (NASW) Working Group's NASW approach. The subcommittee will also discuss the progress of the Automated Commercial Environment (ACE) Single Window effort.

4. The Trade Enforcement and Revenue Collection (TERC) Subcommittee will discuss the progress made on prior TERC, Bond Working Group, and Intellectual Property Rights Working Group recommendations, as well the recommendations from the Antidumping and Countervailing Duty Working Group.

5. The Trade Modernization Subcommittee will discuss the progress of the International Engagement and Trade Facilitation Working Group which is identifying examples of best practices in the U.S. and abroad that facilitate trade and could be applied globally. The subcommittee will also discuss the progress of the Revenue Modernization Working Group.

6. The Trusted Trader Subcommittee will continue their discussion on their vision for an enhanced Trusted Trader concept that includes engagement with CBP to include relevant partner government agencies with a potential for international interoperability.

Meeting materials will be available by July 22, 2016, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: July 6, 2016.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations.

[FR Doc. 2016–16359 Filed 7–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0026]

Agency Information Collection Activities: Immigrant Petition by Alien Entrepreneur, Form I–526; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 9, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0026 in the subject box, the agency name and Docket ID USCIS–2007–0021. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0021;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0021 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *Title of the form/collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–526; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–526 is used by the USCIS to determine if an alien can enter the U.S. to engage in commercial enterprise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–526 is 11,939 and the estimated hour burden per response is 1 hour and 50 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 21,848 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no estimated annual cost burden associated with this collection of information.

Dated: July 5, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–16279 Filed 7–8–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5915–N–05]

Notice of Proposed Information Collection for License for the Use of Personally Identifiable Information Protected Under the E-Government Act of 2002, Title V and the Privacy Act of 1974

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 9, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Shroder, Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th Street SW., Room 8124, Washington, DC 20410; telephone (202) 402–5922, (this is not a toll free number). Copies of the proposed data collection instruments and other available documents may be obtained from Dr. Shroder.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: License for the Use of Personally Identifiable Information Protected Under the E-Government Act of 2002, Title V and the Privacy Act of 1974.

Description of the need for information and proposed use: The United States Department of Housing and Urban Department (HUD) has collected and maintains personally identifiable information, the confidentiality of which is protected by the Privacy Act of 1974 (5 U.S.C 522A) and Title V, subtitle A of the E-Government Act of 2002 (CIPSEA) (U.S.C. 3501 note). HUD wishes to make the data available for statistical, research, or evaluation purposes for qualified organizations capable of research and analysis consistent with the statistical, research, or evaluation purposes for which the data were provided or are maintained, but only if the data are used and protected in accordance with the terms and conditions stated in this license (License). Upon receipt of such assurance of qualification and capability, it is hereby agreed between HUD and (Name of the organization to be licensed) that the license be granted.

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Instrument	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	12	12	1	12
Quarterly Reports	0	0	0	0
Annual Reports	40	40	1	40
Final Reports	6	6	.25	1.5
Recordkeeping	12	36	0.5	18
Total	12	94	2.75	71.5

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: June 29, 2016.

Katherine M. O'Regan,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2016–16344 Filed 7–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5956–N–01]

Notice of HUD-Held Healthcare Loan Sale (HLS 2016–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's intention to sell eight (8) unsubsidized healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive auction (HLS 2016–1 or Loan Sale) on or about July 20, 2016. This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid.

DATES: A Bidder's Information Package (BIP) will be made available on or about June 22, 2016. Bids for the loans must be submitted on the bid date of July 20, 2016 between certain specified hours. HUD anticipates that an award or awards will be made on or before July 22, 2016. Closing is expected to take place between August 1, 2016 and August 3, 2016.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *www.hud.gov/fhaloansales.* Please fax or email as well as mail executed original documents to JS Watkins Realty Partners, LLC: J.S. Watkins Realty Partners, LLC, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, *Attention:* HLS 2016–1 Sale Coordinator, *Fax:* 1–978–967–8607, *Email: hls2016–1@debtx.com.*

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Asset Sales Office, Room 3136, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000; telephone 202–402–3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell, in HLS 2016–1, eight (8) unsubsidized healthcare mortgage loans (Mortgage Loans) consisting of four first lien notes and four associated 2nd lien notes secured by four nursing home facilities located in Bloomfield, Enfield, Windham, and Hartford, Connecticut. The Mortgage Loans are non-performing mortgage loans. The listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with HUD servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Qualification Statement describes the entities/individuals that may be qualified to bid on the Mortgage Loans if they meet certain requirements as detailed in the Qualification Statement. Some entities/individuals must meet additional requirements in order to be qualified to bid, including but not limited to:

Any mortgagee/servicer who originated one or more of the Mortgage Loans; a mortgagor or a operator, with respect to any HUD insured or subsidized mortgage loan (excluding the Mortgage Loans being offered in the Loan Sale) who is currently in default, violation, or noncompliance with one or more of HUD's requirements or business agreements; a limited partner, nonmanaging member, investor and/or shareholder who owns a 1 percent or less interest in one or more the Mortgage Loans, or in the project securing one or more the Mortgage Loans; and any of the aforementioned entities'/individuals' principals, affiliates, family members, and assigns.

Interested entities/individuals who fall into one of these categories should review the Qualification Statement to determine whether they may be eligible to qualify to submit a bid on the Mortgage Loans. Other entities/individuals not described herein may also be restricted from bidding on the Mortgage Loans, as fully detailed in the Qualification Statement.

The Bidding Process

The BIP describes in detail the procedure for bidding in HLS 2016–1. The BIP also includes a standardized non-negotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a minimum deposit of the greater of 10 percent of the total bid or $100,000. HUD will evaluate the bids submitted and determine the successful bid(s) in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price, with any amount beyond the purchase price being returned to the bidder. Deposits will be returned to unsuccessful bidders. Closings are expected to take place between August 1, 2016 and August 3, 2016.

These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes the due diligence process for reviewing loan files in HLS 2016–1. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans is provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include the Mortgage Loans in a later sale. The Mortgage Loans will not be withdrawn after the award date except as is specifically provided for in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, (12 U.S.C. 1715z–11a(a)).

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loan. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are among those ineligible to bid on the Mortgage Loans being sold in HLS 2016–1:

1. A mortgagor or operator with respect to one or more the Mortgage Loans being offered in the Loan Sale, or an Active Shareholder (as such term is defined in the Qualification Statement);

2. Any individual or entity, and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity, that is a mortgagor or operator with respect to any of HUD's multifamily and/or healthcare programs (excluding the Mortgage Loans being offered in the Loan Sale) and that has failed to file financial statements or is otherwise in default under such mortgage loan or is in violation or noncompliance of any regulatory or business agreements with HUD and fails to cure such default or violation by no later than July 6, 2016;

3. Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to 2 CFR part 2424;

4. Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with HLS 2016–1;

5. Any employee of HUD, a member of such employee's family, or an entity owned or controlled by any such employee or member of such an employee's family;

6. Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under provisions (3) through (5) above to assist in preparing its bid on any Mortgage Loan.

7. An FHA-approved mortgagee, including any principals, affiliates, or assigns thereof, that has received FHA insurance benefits for the one or more of the Mortgage Loans being offered in the Loan Sale;

8. An FHA-approved mortgagee and/or loan servicer, including any principals, affiliates, or assigns thereof, that originated one ore more of the Mortgage Loans being offered in the Loan Sale if the Mortgage Loan defaulted within two years of origination and resulted in the payment of an FHA insurance claim;

9. Any affiliate, principal or employee of any person or entity that, within the two-year period prior to July 1, 2016, serviced any Mortgage Loan or performed other services for or on behalf of HUD;

10. Any contractor or subcontractor to HUD that otherwise had access to information concerning any Mortgage Loan on behalf of HUD or provided services to any person or entity which, within the two-year period prior to July 1, 2016, had access to information with respect to the Mortgage Loan on behalf of HUD;

11. Any employee, officer, director or any other person that provides or will provide services to the prospective bidder with respect to the Mortgage Loans during any warranty period established for the Loan Sale, that serviced the Mortgage Loans or performed other services for or on behalf of HUD or within the two-year period prior to July 1, 2016, provided services to any person or entity which serviced, performed services or otherwise had access to information with respect to any Mortgage Loan for or on behalf of HUD.

Other entities/individuals not described herein may also be restricted from bidding on the Mortgage Loans, as fully detailed in the Qualification Statement.

The Qualification Statement provides further details pertaining to eligibility requirements. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in HLS 2016–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HLS 2016–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for the Mortgage Loans, upon the closing of the sale of the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to HLS 2016–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HLS 2016–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: June 29, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2016–16258 Filed 7–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21438; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Texas Archeological Research Laboratory, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Texas Archeological Research Laboratory (TARL) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated

funerary objects and present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to TARL. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to TARL at the address in this notice by August 10, 2016.

ADDRESSES: Marybeth Tomka, Head of Collections, Texas Archaeological Research Laboratory, 10100 Burnet Road, PRC Building 5, Austin, TX 78758, telephone (512) 475–6853, email *marybeth.tomka@austin.utexas.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of TARL in Austin, TX. The human remains and associated funerary objects were removed from Zapata County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by TARL professional staff in consultation with representatives of the Comanche Nation, Oklahoma, the Kiowa Indian Tribe of Oklahoma, the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, and the Tonkawa Tribe of Indians of Oklahoma.

History and Description of the Remains

In 1952, human remains representing, at minimum, one individual were removed from site 41ZP2, also referenced as the "Castillo Site" in Zapata County, TX. The burial was discovered east of the Rio Grande River, and the human remains were likely partially or completely excavated by a "Mr. Garcia" prior to the arrival of professional archeologists. The human remains are identified by two TARL Human Osteology (HO) numbers: #2428 and #3404. The cranial material (TARL HO #2428) represents a young adult female (approximately 20–35 years old at the time of death). The age-at-death could not be determined for the postcranial material (TARL HO #3404). While packaged under separate HO numbers, TARL has determined that these human remains likely belong to the same individual. No known individuals were identified. The 190 associated funerary objects are six pieces of chert debitage, two bifaces, one Tortugas dart point, one bone awl (possibly animal), 95 bone beads (strung necklace), 70 fragmentary bone beads, one bone tube (a modified right human ulna), 13 ochre pebbles and fragments, and one ochre pebble. Based on the presence of the Tortugas point associated with these human remains, this individual is estimated to date to the Late Middle Archaic Period (approximately 1000 B.C.).

In 1996, human remains representing, at minimum, one individual were recovered from a slope above the Rio Grande at site 41ZP7 in Zapata County, TX. The human remains of one relatively complete individual (TARL HO #3604) were exposed due to low water levels at Falcon Lake and then excavated by TARL archeologists and transported to Austin for subsequent analysis. The human remains represent an older adult female, 50 years old or older at the time of death. No known individuals were identified. The 15 associated funerary objects are one Desmuke Point, two Tortugas Points, five Kinney Points, one Abasolo Point, one Refugio Point, two Catan Points, one Matamoros Point, and two biface fragments. Based on the presence of the projectile point artifacts associated with these human remains, this burial is estimated to date to the Middle to Late/Transitional Archaic Periods (approximately 2000 B.C. to A.D. 1000).

In 1995, human remains representing, at minimum, one individual were salvaged from site 41ZP8 in Zapata County, TX. These human remains were found eroding from deposits during a low water episode at Falcon Lake and were subsequently reburied in an individual's garden. In 1996, the human remains were removed from the garden and placed in the custody of TARL. The human remains (TARL HO #4023) represent a single, juvenile individual aged 12–24 months old and of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In the 1990s, during a period of low water levels at Falcon Lake, human remains representing, at minimum, one individual were recovered from site 41ZP8 in Zapata County, TX. The context of these human remains (TARL HO #4024) is unknown, but they were originally packaged with two other sets of remains (TARL HO #4023 and #4025). This individual is represented by one left innominate and is a middle to older adult female, aged 42–55. No known individuals were identified. No associated funerary objects are present.

In the 1990s, human remains representing, at minimum, five individuals were uncovered during low-water levels at Falcon Lake, somewhere near site 41ZP8 in Zapata County, TX (TARL HO #4025). The sex of these individuals could not be determined and their ages are unclear. Two of the individuals might be juveniles. No known individuals were identified. No associated funerary objects are present.

In 1950, human remains representing, at minimum, one adult individual were recorded by J.T. Hughes at site 41ZP10 in Zapata County, TX. The individual (TARL HO #2113) is represented by only the bottom half of the skeleton. The individual is a middle-adult (30 years old or older). The individual's sex could not be determined, although the original report suggests the individual may have been female. No known individuals were identified. The 21 associated funerary objects are four Tortugas Points, three Kinney Points, one Abasolo Point, one scraper/biface, one end scraper, seven knives/bifaces, and four Matamoros Points. One grooved sandstone abrader was noted on a 1950 map, but cannot be located in TARL's collections. Based on the presence of the projectile point artifacts associated with these human remains, this burial is estimated to date to the Middle to Late/Transitional Archaic Periods (approximately 1000 B.C. to A.D. 1000).

In 1952, human remains representing, at minimum, three individuals were identified at the Gaspar Garcia Site, 41ZP61, near the Castillo Site (41ZP7) within the Falcon Reservoir of Zapata County, TX. The first of the three individuals (TARL HO #2182) is represented by only a few fragmentary remains, so the age and sex could not be determined. Six bone bead fragments were comingled with these human remains. The second individual (TARL HO #2356) is a young to middle adult male, approximately 25–44 years old at the time of death. The third individual (TARL HO #3405) is represented by a single fragment—the distal epiphysis of the right femur. The sex and age of this individual could not be determined. No known individuals were identified. Associated funerary objects were identified for this site, but it is unclear whether the objects were placed with only one or more of the individuals listed for this site (TARL HO #2182, #2356, or #3405). The 146 associated funerary objects are one Desmuke Point, one Tortugas Point, one Matamoros Point, one triangular biface, one chert debitage, one chert biface, one polished pebble, 128 bone beads (possibly bird), five ochre pebbles, and the six bone bead fragments that were found commingled with the human remains of TARL HO #2182. Based on the presence of the projectile points associated with these human remains, these burials are estimated to date to the Middle to Late/Transitional Archaic Periods (approximately 1000 B.C. to A.D. 1000).

In 1952, human remains representing, at minimum, one individual were exposed at site 41ZP67 during low-water levels at Falcon Reservoir in Zapata County, TX. This individual (TARL HO #2055) is represented by only cranial remains and is estimated to be an adult female, at least 23 years old at the time of death. No known individuals were identified. The single associated funerary object is one Tortugas dart point. Based on the presence of the Tortugas dart point associated with these human remains, this burial is estimated to date to the Late Middle Archaic Period (approximately 1000 B.C.).

In 1996, human remains representing, at minimum, one individual were recovered from site 41ZP322 during low-water levels at Falcon Reservoir in Zapata County, TX. The human remains (TARL HO #4028) were eroding from a slope within the site. The individual is represented by cranial, long bone, and other postcranial fragments. The age and sex of this individual could not be determined. No known individuals were identified. A "Pandora-like dart point" was reported along with the human remains, but cannot be located within TARL's current collections. Based on the presence of the dart point associated with these human remains, this burial is estimated to date to the Middle to Late Archaic Period (approximately 4000 B.C. to 1350 A.D.).

During the 1980s, human remains representing, at minimum, three individuals were excavated from various sites within Falcon Reservoir in Zapata County, TX. Information on the excavation of these human remains is lacking, and the skeletal remains associated with these individuals (TARL HO #4018A, #4018B, and #4018C) are fragmentary. The individuals are all estimated to be adults, but their sex cannot be determined. One individual (TARL HO #4018B) is 30+ years old at the time of death. No known individuals were identified. There are no associated funerary objects present, but a small bag of non-human faunal remains is included with the individuals.

In 1995, human remains representing, at minimum, one individual were excavated from an unrecorded site in Zapata County, TX, during a low-water period at Falcon Reservoir. This individual (TARL HO #4019) is represented by only a few long bone fragments. The individual's age and sex cannot be determined. No known individuals were identified. No associated funerary objects are present.

In 1995, human remains representing, at minimum, one individual were excavated from an unrecorded site within Falcon Reservoir in Zapata County, TX. No information on this excavation is available. The human remains (TARL HO #4020) consist only of a few cranial fragments. The individual is an adult 30+ years old at the time of death, but sex cannot be determined. No known individuals were identified. No associated funerary objects are present.

In 1996, human remains representing, at minimum, one individual were recovered from an unrecorded site in Zapata County, TX. This individual (TARL HO #4021) is an adult female, possibly 50+ years old at the time of death. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were recovered from an unrecorded site "several hundred meters north of . . . 41ZP86" (in Zapata County, TX). While the human remains (TARL HO #4022) were located near a historic cemetery and 41ZP86, they are likely not associated with either of the aforementioned sites. Although past analysis records indicate the individual is female, the individual is more likely a middle-adult male, approximately 35–50 years old at the time of death. No known individuals were identified. The 1996 osteological analysis notes that "stone artifacts" were included with these remains, but no count or description was provided, and those artifacts cannot be located in TARL's collections. Therefore, no associated funerary objects are present.

Due to the archeological context of the human remains described above, TARL has determined these human remains to be Native American.

TARL consulted with the Comanche Nation, Oklahoma, the Kiowa Indian Tribe of Oklahoma, the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, and the Tonkawa Tribe of Indians of Oklahoma based on the Indian tribes' interest in human remains found in Zapata County. However, TARL was unable to determine the cultural affiliation of these human remains with any present-day Indian tribe.

Determinations Made by TARL

Officials of TARL have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 22 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 373 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Comanche Nation, Oklahoma, and the Kiowa Indian Tribe of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Comanche Nation, Oklahoma, and the Kiowa Indian Tribe of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Marybeth Tomka, Texas Archeological Research Laboratory, 10100 Burnet Road, PRC Bldg. 5, Austin, TX 78758, telephone (512) 475–6853, email *marybeth.tomka@austin.utexas.edu,* by August 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Comanche Nation, Oklahoma, and the

Kiowa Indian Tribe of Oklahoma may proceed.

TARL is responsible for notifying the Comanche Nation, Oklahoma, the Kiowa Indian Tribe of Oklahoma, the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, and the Tonkawa Tribe of Indians of Oklahoma that this notice has been published.

Dated: June 29, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–16277 Filed 7–8–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification To Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 30, 2016, a proposed modification ("Modification") to the consent decree in *United States* v. *City of Newburgh, et al.,* Civil Action No. 08 Civ. 7378, was lodged with the United States District Court for the Southern District of New York.

The Modification resolves the claims of the United States under sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9607 and 9613, against 34 potentially responsible parties (the "New Settlers") who arranged for scrap metal containing hazardous substances to be transported to the Consolidated Iron and Metal Company Superfund Site for treatment or disposal. The site is a former junkyard and scrap metal processing facility located in the Newburgh, New York. Consolidated Iron and Metal Company, Inc., now defunct, operated the facility from the 1950s until 1999. Consolidated, while processing scrap metal materials, contaminated the site with hazardous substances, including lead, polychlorinated biphenyls and volatile organic compounds.

After the consent decree became effective, the five defendants who signed the consent decree (the "Original Settlers") reached settlements with the New Settlers. As permitted by the consent decree, the Original Settlers presented the settlements to the Environmental Protection Agency for potential inclusion in the consent decree by amendment or separate agreement, with the net proceeds to be divided between the United States and the Defendants. EPA has agreed to inclusion of the settlements with the New Settlers.

The total net proceeds from these settlements will be $717,070. In accordance with the consent decree, the Modification provides for the New Settlers to pay $437,078 to the United States and $279,992 to the Original Settlers. The New Settlers will receive contribution protection and a covenant not to sue from the United States.

The publication of this notice opens a period for public comment on the Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City of Newburgh, et al.*, D.J. Ref. 90–11–3–07979/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Modification may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $1.00.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–16294 Filed 7–8–16; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on July 14, 2016. The meeting will commence at 2:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Consider and act on FY 2018 Budget Request *Resolution 2016–XXX*
   - Jim Sandman, President
   - Carol Bergman, Director, Government Relations and Public Affairs
   - Jeffrey Schanz, Inspector General
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 7, 2016.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2016–16432 Filed 7–7–16; 4:15 pm]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 14–CRB–0006 DART SR (CO/FA) (2013)]

Distribution of 2013 Digital Audio Recording Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Determination.

SUMMARY: The Copyright Royalty Judges announce their determination regarding distribution of the Digital Audio Recording Technologies (DART) royalties deposited with the Licensing Division of the Copyright Office during 2013 to copyright owners and featured recording artists. The Judges issued their determination to the participants in the proceeding in March 2016 and received one motion for rehearing. On May 6, 2016, the Judges denied the motion and forwarded the determination to the Register of Copyrights for the mandatory 60-day review prior to publication in the **Federal Register** in accordance with 17 U.S.C. 801(f)(1)(D) & 803(c)(6).[1]

DATES: *Effective Date:* July 11, 2016.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle at (202) 707–7658 or at *crb@loc.gov.*

ADDRESSES: The final distribution order is also published on the agency's Web site at *www.loc.gov/crb.*

SUPPLEMENTARY INFORMATION:

The purpose of this proceeding is to distribute to copyright owners and featured recording artists Digital Audio Recording Technologies (DART) royalties deposited with the Licensing Division of the Copyright Office during 2013 under the Audio Home Recording Act of 1992, Public Law 102–563, 106 Stat. 4237 (codified as amended at 17 U.S.C. 1000–1010).

Prior to the commencement of this proceeding, AARC submitted notice that it had reached a settlement with all but five claimants to the 2013 DART Sound Recordings Fund, Copyright Owners' and Featured Artists' subfunds, and requested a partial distribution of 98% of those funds. *See AARC Notice of Settlement and Request for Partial Distribution . . .* (Aug. 19, 2014). In December 2014, the Copyright Royalty Judges (Judges) granted AARC's request for a partial distribution of 98% of the DART funds at issue in this proceeding. *See Order Granting AARC's Request for Partial Distribution . . .* (Dec. 19, 2014). The Copyright Royalty Judges (Judges) ordered the remaining 2% of the fund held pending settlement or adjudication of controversies raised by the non-settling claimants: David Powell, George Clinton, Eugene Curry, Kami Talpa, and Herman Kelly. All of the non-settling parties were appearing in this proceeding *pro se.* Their filings appeared to claim only from the Copyright Owners Subfund.

The Judges commenced the captioned royalty distribution proceeding by published notice in March 2015. *See* 80 FR 15632 (Mar. 24, 2015). The notice announced April 23, 2015, as the deadline for interested parties to file a Petition to Participate in this proceeding. The Judges received only one valid and timely Petition to Participate (PTP), that of the Alliance of Artists and Recording Companies, Inc. (AARC). The Judges did, however, receive actual notice, in the form of email, late-filed papers, and correspondence, from other parties[2] claiming an interest in the sound recording royalty funds held for copyright owners and featured artists.

In June 2015, AARC, on its own behalf and on behalf of Jeffrey E. Jacobson, Esq. (together, the Settling Parties), requested distribution of the retained 2% of funds in both Sound Recordings subfunds. Because the Judges were aware of the *pro se* claimants, they denied the AARC motion without prejudice and provided a second opportunity for parties in interest to file a PTP, together with an explanation for the failure to file in the first instance. The Judges set a second deadline for PTPs of September 15, 2015. Only Mr. Curry filed a timely PTP, on his own behalf and on behalf of TAJAI Music, Inc. (TAJAI). As Mr. Curry is not an attorney (and thus ineligible to represent a corporate entity in a proceeding, *see* 37 CFR 350.2, the Judges dismissed the portion of his PTP relating to TAJAI. *See Order Accepting Petition . . . and Setting Schedule . . ..* (Jan. 7, 2016). Mr. Curry's PTP identified his claim as one to the Copyright Owners' subfund.

AARC subsequently requested distribution of the retained 2% of funds in the Sound Recordings Featured Artists' subfund. The Judges approved this request, finding no controversy relating to the Featured Artists' subfund. *See Order Granting AARC's Request for Final Distribution . . .* (Jan. 21, 2016). With regard to the Copyright Owners' subfund, the Judges ordered a paper proceeding under 17 U.S.C. 803(b)(5). *See Order Granting AARC's Request . . .* (Jan. 21, 2016). The "Settling Parties" filed their Written Direct Statement on February 8, 2016. Mr. Curry filed no Written Direct Statement.

On January 28, 2016, the Judges received a paper purporting to be a "Written Direct Statement and Petition to Participate in Respect, Answer to Court's Order Dated Jan 7, 2016" from Mr. Herman Kelly. On February 8, 2016 the Settling Parties moved to reject Mr. Kelly's filing. On March 3, 2016, the Settling Parties filed a Motion to Dismiss Eugene Curry/TAJAI Music, Inc.'s Claims to Any Portion of the 2013 Sound Recordings Funds.

Having considered all the filings relating to the 2013 Sound Recordings DART funds, the Judges find:

1. Mr. Kelly failed to file a Petition to Participate in this proceeding by the first or second deadline set by the Judges. Mr. Kelly also failed to offer any basis by which the Judges might consider excusable neglect for his failure to make a timely filing, as required by the Judges' procedural rules and orders. The Judges DISMISS Mr. Kelly's untimely and invalid PTP. Moreover, even if Mr. Kelly had timely filed his combined "Written Direct Statement and Petition to Participate," the Judges would have dismissed his PTP as deficient, because it failed to (1) state the basis for his claimed interest and (2) provide evidence of sales of any sound recording to which he holds rights. Mr. Kelly's Written Direct Statement also does not provide factual evidence; rather, it asks the Judges to "consider his settlement compromise request for a *[sic]* equal share of the 2% featured recording artist subfund, copyright owners subfund . . ."[3] Accordingly, Mr. Kelly's filing fails to establish a right to any of the funds remaining in the DART Sound Recordings royalty fund for 2013.

2. The Settling Claimants presented uncontroverted evidence that neither Mr. Curry nor TAJAI have a right to sound recording royalties for any year. *See* Michael L. Stern WDT at 3–5, Cynthia Oliver WDT at 1.[4] The sound recording rights to the music claimed by Mr. Curry are owned by Universal Music Group.[5] There are no reports of sales

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[1] The short delay in publication of this determination was a result of a staff shortage.

[2] *See, e.g.,* papers from George Clinton and Ronald Ford (September, November, and December 2014), Eugene Curry/TAJAI Music (various dates between September 2014 and January 2016), and Herman Kelly (between December 2014 and October 2015).

[3] As noted, the Judges ordered final distribution of the Featured Artists subfund in January 2016.

[4] The Settling Parties submitted the witnesses' written direct testimony and supporting exhibits in their timely filed Written Direct Statement.

[5] The Judges make no finding with respect to whether Mr. Curry or TAJAI Music, Inc. has any

Continued

of the music claimed by Mr. Curry during 2013. Stern WDT at 3-

3. The Settling Parties are entitled to distribution of all remaining funds in the 2013 DART Sound Recordings fund.

Therefore, the Judges hereby ORDER that claims asserted by all but the Settling Parties to the 2013 DART Sound Recordings Fund, including both the Featured Artists' and the Copyright Owners' subfunds, are DENIED.

As required by 11 U.S.C. 803(c), the Judges issue this determination, which triggers the deadline for motions for rehearing. *See* 17 U.S.C. 803(c)(2).

March 24, 2016.

SO ORDERED.

Suzanne M .Barnett,

Chief United States Copyright Royalty Judge.

David R. Strickler,

United States Copyright Royalty Judge.

Jesse M. Feder,

United States Copyright Royalty Judge.

Dated: July 5, 2016.

Suzanne M. Barnett,

Chief United States Copyright Royalty Judge.

Approved by:

David S. Mao,

Librarian of Congress.

[FR Doc. 2016–16336 Filed 7–8–16; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Public Availability of National Endowment for the Arts FY 2015 Service Contract Inventory

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of public availability of FY 2015 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), National Endowment for the Arts is publishing this notice to advise the public of the availability of the FY 2015 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2015. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* National Endowment for the Arts has posted its inventory and a summary of the inventory on the National Endowment for the Arts Web site at the following link: *https://www.arts.gov/open-government/fair-act-service-contract-inventories.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Ned Read in the Office of the Deputy Chairman for Management and Budget at 202–682–5782 or *readn@arts.gov.*

Dated: July 5, 2016.

Kathy N. Daum,

Director, Office of Administrative Services.

[FR Doc. 2016–16280 Filed 7–8–16; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: July 11, 18, 25, August 1, 8, 15, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 11, 2016

There are no meetings scheduled for the week of July 11, 2016.

Week of July 18, 2016—Tentative

Thursday, July 21, 2016

9:30 a.m. Briefing on Project Aim (Public Meeting) (Contact: Janelle Jessie: 301–415–6775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 25, 2016—Tentative

Tuesday, July 26, 2016

9:00 a.m. Meeting with NRC Stakeholders (Public Meeting) (Contact: Denise McGovern: 301–415–0681)

Thursday, July 28, 2016

9:00 a.m. Hearing on Combined Licenses for Levy Nuclear Plant, Units 1 and 2: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Donald Habib: 301–415–1035)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of August 1, 2016—Tentative

There are no meetings scheduled for the week of August 1, 2016.

Week of August 8, 2016—Tentative

There are no meetings scheduled for the week of August 8, 2016.

Week of August 15, 2016—Tentative

There are no meetings scheduled for the week of August 15, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: July 7, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–16422 Filed 7–7–16; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206-0218, Death Benefit Payment Rollover Election, RI 94-007

AGENCY: U.S. Office of Personnel Management.

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rights to the musical work underlying the sound recording.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0218, Death Benefit Payment Rollover Election, RI 94–007. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until September 9, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Washington, DC 20415–0001, Attention: Alberta Butler, Room 2347–E, or sent by email to *Alberta.Butler@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 94–7 provides Federal Employees Retirement System (FERS) surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Death Benefit Payment Rollover Election.

OMB: 3206–0218.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,444.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 3,444.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–16328 Filed 7–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206-0170, Application for Refund of Retirement Deductions/FERS (SF 3106) and Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS (SF 3106A)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0170, Application for Refund of Retirement Deductions/FERS (SF 3106) and Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS (SF 3106A). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on April 20, 2016 [*Volume 81, No. 76, Pg. 23333*] allowing for a 60-day public comment period. One comment was received for this information collection to make minor edits to the formatting of the form that is under review. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SF 3106, Application for Refund of Retirement Deductions/Federal Employees Retirement System (FERS), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Refund of Retirement Deductions/Federal Employees Retirement System; Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions under FERS.

OMB Number: 3206–0170.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 3106 = 8,000; SF 3106A = 6,400.

Estimated Time per Respondent: SF 3106 = 30 minutes; SF 3106A = 5 minutes.

Total Burden Hours: 4533.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–16329 Filed 7–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0190, Application for Deferred or Postponed Retirement: Federal Employees Retirement System, RI 92–19

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0190, Application for Deferred or Postponed Retirement: Federal Employees Retirement System, RI 92–19. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until September 9, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Washington, DC 20415–0001, Attention: Alberta Butler, Room 2347–E, or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Retirement Services Publications Team, 1900 E Street NW., Room 3316–L, Washington, DC 20415–0001, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 92–19 is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS).

OMB Number: 3206–0190.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,964.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 1,964.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–16325 Filed 7–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206-0174, Survivor Annuity Election for a Spouse, RI 20-63; Cover Letter Giving Information About the Cost To Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity, RI 20–117

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, with change of a currently approved information collection request (ICR) 3206–0174, Survivor Annuity Election for a Spouse (RI–20–63), Cover Letter Giving Information About the Cost to Elect Less Than the Maximum Survivor Annuity (RI 20–116), Cover Letter Giving Information About the Cost to Elect the Maximum Survivor Annuity (RI 20–117). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on February 22, 2016 at Volume 81 FR 8760 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of

Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 20–63 is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter is used to supply the information that may have been requested by the annuitant about the cost of electing less than the maximum survivor annuity. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Survivor Annuity Election for a Spouse/Cover Letter Giving Information About the Cost to Elect Less Than the Maximum Survivor Annuity/Cover Letter Giving Information About the Cost to Elect the Maximum Survivor Annuity.

OMB Number: 3206–0174.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: RI 20–63 = 2,200; RI 20–116 & RI 20–117 = 200.

Estimated Time Per Respondent: RI 20–63 = 45 min.; RI 20–116 and RI 20–117 = 10 min.

Total Burden Hours: 1,834.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–16327 Filed 7–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0128, Application for Refund of Retirement Deductions (CSRS), SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0128, Application For Refund of Retirement Deductions Civil Service Retirement System and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on April 8, 2016 [*Volume 81, No. 68, Page 20696*] allowing for a 60-day public comment period. No comments were received for this information collection.

DATES: Comments are encouraged and will be accepted until August 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

SF 2802 is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. SF 2802A is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Refund of Retirement Deductions (CSRS)/Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System.

OMB Number: 3206–0128.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 2802 = 3,741; SF 2802A = 3,389.

Estimated Time per Respondent: SF 2802 = 1 hour; SF 2802A = 15 minutes.

Total Burden Hours: 4,588.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–16326 Filed 7–8–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–162 and CP2016–235; MC2016–163 and CP2016–236]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 12, 2016 (Comment due date applies to all Docket Nos. listed above)

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2016–162 and CP2016–235; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 230 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 1, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* July 12, 2016.

2. *Docket No(s).:* MC2016–163 and CP2016–236; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 231 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 1, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* July 12, 2016.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–16233 Filed 7–8–16; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Notice of Public Meeting; Sunshine Act

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 27, 2016, 10:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Executive Committee Reports

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: July 7, 2016.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2016–16404 Filed 7–7–16; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78225; File No. SR–NASDAQ–2016–072]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the Amplify Dow Theory Forecasts Buy List ETF of Amplify ETF Trust

July 5, 2016.

On May 10, 2016, the NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Amplify Dow Theory Forecasts Buy List ETF of Amplify ETF Trust. On May 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on May 31, 2016.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 15, 2016.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77890 (May 24, 2016), 81 FR 34419.

[4] 15 U.S.C. 78s(b)(2).

The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates August 29, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NASDAQ–2016–072), as modified by Amendment No. 1 thereto.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16269 Filed 7–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10102A; 34–78127A; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** on June 27, 2016, providing notice that the Securities and Exchange Commission Investor Advisory Committee would hold a public meeting on Thursday, July 14, 2016. The document contained an incorrect description of the agenda for the meeting.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Senior Special Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

Correction

In the **Federal Register** of June 27, 2016, in FR Doc. 2016–15109, on page 41629, in the first column, correct the description of the meeting agenda to read:

The agenda for the meeting includes: Remarks from Commissioners; a discussion of the state of sustainability reporting; a discussion regarding investment company reporting modernization; and a nonpublic administrative work session during lunch.

Dated: July 6, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–16311 Filed 7–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17a–7, SEC File No. 270–147, OMB Control No. 3235–0131.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–7 (17 CFR 240.17a–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–7 requires a non-resident broker-dealer (generally, a broker-dealer with its principal place of business in a place not subject to the jurisdiction of the United States) registered or applying for registration pursuant to section 15 of the Exchange Act to maintain—in the United States—complete and current copies of books and records required to be maintained under any rule adopted under the Exchange Act and furnish to the Commission a written notice specifying the address where the copies are located. Alternatively, Rule 17a–7 provides that non-resident broker-dealers may file with the Commission a written undertaking to furnish the requisite books and records to the Commission upon demand within 14 days of the demand.

There are approximately 45 non-resident brokers and dealers. Based on the Commission's experience, the Commission estimates that the average amount of time necessary to comply with Rule 17a–7 is one hour per year. Accordingly, the total industry-wide reporting burden is approximately 45 hours per year. Assuming an average cost per hour of approximately $291 for a compliance manager, the total internal cost of compliance for the respondents is approximately $13,095 per year.[1]

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 5, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–16192 Filed 7–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78226; File No. SR–BatsBZX–2016–31]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Interpretation and Policy .01 to Rule 16.1 To Specify the Calculation Methodology for Counting Professional Orders

July 5, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the

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[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] $291 per hour for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff for an 1800-hour work-year, multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

"Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Interpretation and Policy .01 to Rule 16.1 to specify the manner in which the Exchange calculates average daily order submissions for purposes of counting Professional orders, as further described below.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Interpretation and Policy .01 to Rule 16.1 to specify the methodology for counting average daily order submissions in listed options to determine whether a person or entity meets the definition of a Professional ("Professional order counting"). The proposed rule change is designed to harmonize Professional order counting with the recently adopted rules of competing options exchanges—specifically the Chicago Board of Options Exchange, Inc. ("CBOE") and NASDAQ OMX PHLX LLC ("PHLX").[5]

Rule 16.1(a)(46) defines a Professional "as any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)." In adopting Rule 16.1(a)(46), the Exchange believed that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriate, objective approach that will reasonably distinguish such persons and entities from non-professional, retail investors or market participants. In order to properly represent orders entered on the Exchange, Options Members are required to indicate whether Customer orders are "Professional" orders.[6] To comply with this requirement, Options Members are required to review their Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Customer orders or Professional orders.[7]

The advent of new multi-leg spread products and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants has raised questions as to what should be counted as an "order" for Professional order counting purposes. The proposed changes would specifically address the counting of multi-leg spread products, algorithm generated orders, and complex orders for purposes of determining Professional status. In addition, the proposal is intended to provide guidance regarding the methodology used by the Exchange when calculating average daily orders for Professional order counting purposes.[8]

As proposed, the rule would provide that an order would count as one order for Professional counting purposes, unless one of the exceptions enumerated in the proposed rule stipulates otherwise (each an "Exception"). The first Exception relates to the treatment of complex orders for purposes of computing orders for Professional order counting purposes. Specifically, the proposed rule provides that a complex order of eight (8) option legs or less would count as one order, whereas a complex order comprised of nine (9) option legs or more counts as multiple orders with each option leg counting as its own separate order.[9] The Exchange believes the distinction between complex orders with up to eight option legs from those with nine or more option legs is appropriate in light of the purposes for which Rule 16.1(a)(46) was adopted. In particular, the Exchange notes that multi-leg complex order strategies with nine or more option legs are more complex in nature and thus, more likely to be used by professional traders than traditional two, three, and four option leg complex order strategies such as the strangle, straddle, butterfly, collar, and condor strategies, and combinations thereof with eight option legs or fewer, which are generally not algorithmically generated and are frequently used by non-professional, retail investors. Thus, the types of complex orders traditionally placed by retail investors would continue to count as only one order while the more complex strategy orders that are typically used by professional traders would count as multiple orders for Professional order counting purposes.[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016), 81 FR 18668, (March 31, 2016) (SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (SR–Phlx–2016–10) (approval orders). The Exchange notes that it recently issued guidance regarding Professional order counting. *See e.g.,* Bats BZX Exchange, Inc. and Bats EDGX Exchange Inc., Regulatory Circular (RC–2015–012, respectively) dated December 21, 2015. This proposal codifies that guidance in a manner that is consistent with CBOE and PHLX's approved rules. The Exchange notes that various other options exchanges refer to Professionals as "Professional Customers." The Exchange has proposed to continue to use the term Professional, as is currently the case in Exchange rules.

[6] *See e.g.,* Rule 18.2(a)(6) (Conduct and Compliance with the Rules) (requiring that accurate information is input into the System, including but not limited to, the Options Member's capacity).

[7] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter. Option Members would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While Option Members only would be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the Option Member would be required to change the manner in which it is representing the customer's orders within five business days.

[8] This proposal is consistent with CBOE and PHLX's approved rules. *See* supra note 5.

[9] *See* proposed Interpretation and Policy .01(a)(1)–(2).

[10] *See also* supra note 5.

The second Exception relates to calculations for parent/child orders. As proposed, if a parent order submitted for the beneficial account(s) of a person or entity other than a broker or dealer is subsequently broken up into multiple child orders on the *same side* (buy/sell) *and series* by a broker or dealer, or by an algorithm housed at the broker or dealer, or by an algorithm licensed from the broker or dealer but housed with the customer, then the order would count as one order even if the child orders are routed across several exchanges.[11] The Exchange believes this proposed change would allow the orders of public customers to be "worked" by a broker (or a broker's algorithm) in order to achieve best execution without counting the multiple child orders as separate orders for Professional order counting purposes. Conversely, if a parent order, including a strategy order,[12] is broken into multiple child orders on *both sides* (buy/sell) of a series and/or multiple series, then each child order would count as a *separate* new order per side and series.[13] This proposed change would allow the Exchange, for Professional order counting purposes, to count as multiple orders those "child" orders of "parent" orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance.

The third Exception would govern the counting methodology for cancel/replace orders. As proposed, any order that cancels and replaces an existing order would count as a *separate* order (or multiple orders in the case of complex orders of nine option legs or more) for Professional order counting purposes.[14] However, the Exchange proposes that an order to cancel and replace a child order would *not* count as a new order if the parent order that was placed for the beneficial account(s) of a non-broker or dealer had been subsequently broken into multiple child orders on the same side and series as the parent order by a broker or dealer, algorithm at a broker or dealer, or algorithm licensed from a broker or dealer but housed at the customer.[15] By contrast, the Exchange proposes that an order that cancels and replaces a child order resulting from a parent order, including a strategy order, that generated child orders on both sides (buy/sell) of a series and/or in multiple series would count as a new order per side and series ("Both Sides/Multiple Series").[16] Finally, the Exchange proposes that, notwithstanding the treatment of a cancel/replace relating to Same Sides/Same Series orders, an order that cancels and replaces any child order resulting from a parent order being pegged to the Exchange's best bid or offer ("BBO") or the national best bid or offer ("NBBO") or that cancels and replaces any child order pursuant to an algorithm that uses the BBO or NBBO in the calculation of child orders and attempts to move with or follow the BBO or NBBO of a particular options series would count as a new order each time the order cancels and replaces in order to attempt to move with or follow the BBO or NBBO.[17]

Implementation

The Exchange proposes to implement the rule on July 1, 2016, which would be announced in a circular distributed to Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and furthers the objectives of section 6(b)(5),[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the requirement set forth in section 6(b)(5) [20] of the Act that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposal is designed to adopt a reasonable and objective approach to determine Professional status that is consistent with the approach being utilized on other options exchanges, which benefits market participants by providing consistency across exchanges regarding the Professional order counting.[21] In this regard, the Exchange believes that codifying the manner in which the Exchange would conduct Professional order counting would provide Option Members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange notes that it is not amending the threshold of 390 orders in listed options per day but, consistent with other exchanges, is revising the method for counting Professional orders in the context of multi-part orders and cancel/replace activity. In short, the proposal addresses how to account for complex orders, parent/child orders, and cancel/replace orders. The Exchange believes that distinguishing between complex orders with nine or more option legs and those orders with eight or fewer option legs is a reasonable and objective approach. In addition, the Exchange believes the proposal appropriately distinguishes between parent/child orders that are generated by a broker's efforts to obtain an execution on a larger size order while minimizing market impact and multi-part orders that used by more sophisticated market participants. Similarly, the Exchange believes that the proposal that cancel/replace orders would count as separate orders with limited exceptions is a reasonable and objective approach to distinguish the orders of retail customers that are "worked" by a broker from orders generated by algorithms used by more sophisticated market participants.

In addition, the Exchange believes that proposed changes to Rule 16.1 provide a more conservative order counting regime for Professional order counting purposes that would identify more traders as Professionals to which the Exchange's definition of Professional was designed to apply and create a better competitive balance for all participants on the Exchange, consistent with the Act. As the options markets have evolved to become more electronic and more competitive, the Exchange believes that the distinction between registered broker-dealers and professional traders who are currently treated as public customers has become increasingly blurred. More and more, the category of public customer today includes sophisticated algorithmic traders including former market makers and hedge funds that trade with a frequency resembling that of broker-dealers. The Exchange believes that it is reasonable under the Act to treat those customers who meet the high level of trading activity established in the proposal differently than customers who do not meet that threshold and are more typical retail investors to ensure that professional traders do not take advantage of priority and/or fee benefits intended for public customers. The Exchange notes that it is not unfair to differentiate between different types of investors in order to achieve certain marketplace balances. The Exchange's Rules currently differentiate between Customers, Order Entry Firms, Market Makers, and the like.

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[11] *See* proposed Interpretation and Policy .01(b)(1).

[12] The term "strategy order" refers to an execution strategy, trading instruction, or algorithm whereby multiple "child" orders on both sides of a series and/or multiple series are generated prior to being sent to an options exchange(s).

[13] *See* proposed Interpretation and Policy .01(b)(2).

[14] *See* proposed Interpretation and Policy .01(c)(1).

[15] *See* proposed Interpretation and Policy .01(c)(2).

[16] *See* proposed Interpretation and Policy .01(c)(3).

[17] *See* proposed Interpretation and Policy .01(c)(4).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* supra note 5.

These differentiations have been recognized to be consistent with the Act. The Exchange does not believe that the rules of the Exchange or other exchanges that accord priority or fee benefits to public customers over broker-dealers are unfairly discriminatory. Nor does the Exchange believe that it is unfairly discriminatory to accord such benefits to only those public customers who on average do not place more than one order per minute (390 per day) under the counting regime that the Exchange proposes. The Exchange believes that such differentiations drive competition in the marketplace and are within the business judgment of the Exchange. Accordingly, the Exchange also believes that its proposal is consistent with the requirement of section 6(b)(8) [22] of the Act that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition in that it treats persons who should be deemed Professionals, but who may not be so under current Rule 16.1(a)(46), in a manner so that they do not receive special benefits. Furthermore, the Exchange believes that the proposed rule change will protect investors and the public interest by helping to assure that retail customers continue to receive the appropriate marketplace advantages on the Exchange and in the marketplace as intended, while furthering competition among marketplace professionals by treating them in the same manner as other similarly situated market participants. The Exchange believes that it is consistent with section 6(b)(5) [23] of the Act not to afford market participants with similar access to information and technology as that of brokers and dealers of securities with marketplace advantages over such marketplace competitors. The Exchange also believes that the proposed rule change would help to remove burdens on competition and promote a more competitive marketplace by affording certain marketplace advantages only to those for whom they are intended. Finally, the Exchange believes that the proposed rule change sets forth a more detailed and clear regulatory regime with respect to calculating average daily order entry for Professional order counting purposes. The Exchange believes that this additional clarity and detail will eliminate confusion among market participants, which is in the interests of all investors and the general public.

Based on the foregoing, the Exchange believes the proposal, which establishes an objective methodology for counting average daily order submissions for Professional order counting purposes, is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will help ensure fairness in the marketplace and promote competition among all market participants. The Exchange believes that this proposal would help establish more competition among market participants and promote the purposes for which the Exchange's Professional rule was originally adopted. Moreover, the proposal would ensure consistency and help to eliminate confusion as to the manner in which options exchanges compute the Professional order volume.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[26] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[27]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that it has considered a substantially similar proposed rule change filed by CBOE and PHLX which it approved after a notice and comment period.[28] This proposed rule change does not raise any new or novel issues from those considered in the CBOE and PHLX proposals. Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) of the Act [30] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[22] 15 U.S.C. 78f(b)(8).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(3)(a)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *Id.*

[28] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016) (Order Approving SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (Order Approving SR–Phlx–2016–10).

[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2016–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–31, and should be submitted on or before August 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16270 Filed 7–8–16; 8:45 am]

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78227; File No. SR–NASDAQ–2016–061]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the First Trust Equity Market Neutral ETF of the First Trust Exchange-Traded Fund VIII

July 5, 2016.

On May 4, 2016, the NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the First Trust Equity Market Neutral ETF of the First Trust Exchange-Traded Fund VIII. The proposed rule change was published for comment in the **Federal Register** on May 25, 2016.[3] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 9, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates August 23, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NASDAQ–2016–061).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16271 Filed 7–8–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77854 (May 19, 2016), 81 FR 33307.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78228; File No. SR–NYSE–2016–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Partial Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 2 and 3, Relating to Pre-Opening Indications and Opening Procedures

July 5, 2016.

I. Introduction

On March 17, 2016, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. On March 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On March 31, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on April 6, 2016.[5] On May 13, 2016, the Commission designated a longer period for action on the proposed rule change.[6] The Commission has received no comments on the proposed rule change.

On June 23, 2016, the Exchange filed Partial Amendment No. 3 to the proposed rule change.[7] The Commission

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded the original filing in its entirety.

[4] Amendment No. 2 superseded the original filing, as modified by Amendment No. 1, in its entirety.

[5] *See* Securities Exchange Act Release No. 77491 (Mar. 31, 2016), 81 FR 20030 ("Notice").

[6] *See* Securities Exchange Act Release No. 77829, 81 FR 31670 (May 19, 2016).

[7] In Partial Amendment No. 3, the Exchange: (1) Stated its belief that securities with an average daily volume of over 500,000 shares at the open warrant manual openings because such a high volume is

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is publishing this notice to solicit comments on Partial Amendment No. 3 from interested persons, and is approving the proposal, as modified by Amendments No. 2 and 3, on an accelerated basis.

II. Description of the Proposal, As Modified by Amendment Nos. 2 and 3

The Exchange proposes to amend its rules relating to pre-opening indications and other opening procedures. With respect to pre-opening indications, the Exchange proposes to consolidate requirements for publication of pre-opening indications in a single rule and to modify the circumstances under which a Designated Market Maker ("DMM") is required to publish pre-opening indications in a security. The Exchange also proposes to allow the Exchange CEO, under certain circumstances, to temporarily suspend the requirement for DMMs to publish pre-opening indications.

With respect to the opening process, the Exchange proposes to specify in its rules that a DMM may open a security electronically only within specified price and volume parameters, which would be doubled during periods of extreme market-wide volatility. The Exchange also proposes to allow the Exchange CEO, under certain circumstances, to temporarily suspend these price and volume parameters, as well as the existing requirement to obtain Floor official approval before opening or reopening a security.

Finally, the Exchange proposes to delete NYSE Rule 48, and to make conforming and technical amendments to several of its rules.

A. Current Pre-Opening Indications and Opening Process on the Exchange

1. Pre-Opening Indications and Mandatory Indications

Exchange rules currently provide for two types of published indications before the open: pre-opening indications and mandatory indications.

First, "pre-opening indications" pursuant to Exchange Rule 15 [8] indicate the security and the price range for the anticipated opening transaction and are published by the Exchange or by the DMM [9] if the opening transaction on the Exchange is anticipated to be more than a specified price range away from the reference price.[10] The pre-opening indications are published on the Exchange's proprietary data feeds rather than through the securities information processor ("SIP").[11]

The current price ranges for pre-opening indications under Rule 15 are:

Exchange closing price	Applicable price change (more than)
Under $20.00	$0.50
$20–$49.99	$1.00
$50.00–$99.99	$2.00
$100–$500	$5.00
Above $500	1.5%

Second, under Exchange Rule 123D, the Exchange also requires that a "mandatory indication" be published if the opening price would result in a significant price change from the previous close or if the opening is delayed past 10:00 a.m.[12] The applicable price parameters for the Rule 123D mandatory indication are:

Previous NYSE closing price	Price change (equal to or greater than)
Under $10.00	1 dollar.
$10—$99.99	lesser of 10% or 3 dollars.
$100 and Over	5 dollars.

Exchange Rule 123D provides that all mandatory indications require the supervision and approval of a Floor official and that subsequent indications are required if a security will open outside the range of the previous indication or if the previous indication had a wide spread. Exchange Rule 123D also requires that a minimum period of time elapse between the publication of the last indication and the commencement of trading. Mandatory Indications are published to the SIP and the Exchange's proprietary data feeds.[13]

During extreme market volatility, NYSE Rule 48 provides that the Exchange may suspend the requirements to publish pre-opening or mandatory indications.[14]

2. Opening Process

Currently, the Exchange's rules provide that a DMM has the responsibility to open its assigned securities as close to the opening bell as possible, but that, when there is a price disparity from the prior close, the DMM should not open trading in an "unduly hasty" manner. Openings on the Exchange may be done manually or electronically, and securities may open on a quote or on a trade. Currently, Exchange systems prevent a DMM from opening a security electronically if the price parameters of Exchange Rule 15 (discussed above) are exceeded or if the volume in the opening cross will exceed 100,000 shares.[15]

B. Proposed Changes

1. Pre-Opening Indications

The Exchange proposes to consolidate pre-opening indications under Rule 15 and mandatory indications under Rule 123D into a single type of pre-opening indication under amended Rule 15.[16] The Exchange also proposes to make changes to the applicable price parameters that would trigger a pre-opening indication, to provide for wider price parameters on volatile trading days, and to prescribe detailed procedures for publication of pre-opening indications. The Exchange further proposes to authorize its CEO, in certain Floor-wide events, to temporarily suspend the publication of pre-opening indications. The proposed pre-opening indications would be published via both the SIP and the Exchange's proprietary data feeds.

While the Exchange would retain the current definition of the reference price used for determining when a pre-opening indication is required, the Exchange would use different parameters for the price movement that

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likely to involve block-sized trades, and a manual opening allows the Exchange's Floor brokers to solicit block-sized interest to participate in the opening; (2) replaced the term "order" with "orderly" in proposed Rules 15(d)(2) and 123D(a)(1)(B)(ii); (3) replaced the term "consult with" with the term "notify" in proposed Rules 15(f)(2)(B) and 123D(c)(2)(B) to describe the action the Exchange CEO must take if a determination is made to suspend the requirements under those rules; and (4) clarified that the filing's previous reference to "consult with" the Chief Regulatory Officer ("CRO") of the Exchange did not intend to create a requirement for the Exchange CEO to obtain the CRO's approval to make a determination under proposed Rules 15(f)(2)(B) and 123D(c)(2)(B). Partial Amendment No. 3 is available at: *https://www.sec.gov/comments/sr-nyse-2016-24/nyse201624-2.pdf.*

[8] *See* NYSE Rule 15(a).

[9] If a DMM issues a pre-opening indication or a mandatory indication (as discussed below), the Exchange shall not publish a pre-opening indication in that security. *See* NYSE Rule 15(a).

[10] Generally, the reference price is the security's last reported sale price on the Exchange. In the case of an initial public offering ("IPO"), the reference price would be the offering price. In the case of a transferred listing, the reference price would be the last reported sale price on the prior listing market. *See* NYSE Rule 15(a).

[11] *See* Notice, *supra* note 5, at 20031. The Exchange may also publish order imbalance information on its proprietary data feeds. The order imbalance information contains the price at which opening interest may be executed in full. *See* NYSE Rule 15(c).

[12] *See* NYSE Rule 123D(b). When mandatory indications under Rule 123D are published, pre-opening indications under Rule 15 are not required.

[13] *See* Notice, *supra* note 5, at 20032.

[14] *See* NYSE Rule 48.

[15] In the Notice, the Exchange represented that DMM generally opens manually when there is a pre-opening indication or a mandatory indication. Further, the Exchange represented that its systems prevents a DMM electronic open if a pre-opening indication is required or if the size of the opening transaction would exceed 100,000 shares.

[16] *See* Notice, *supra* note 5.

would trigger a pre-opening indication. Instead of the current parameters, which vary depending on a security's previous closing price and use both dollar figures and percentages, the Exchange proposes to require a pre-opening indication whenever a security is anticipated to open 5% away from its reference price, except on volatile trading days.

On volatile trading days, the Exchange proposal would double the applicable price range from 5% to 10%. The Exchange proposes to use this wider range under three circumstances: first, if as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures price is more than 2% away from its prior day's closing price; second, when there is a reopening following a market-wide trading halt due to extraordinary market volatility; and third, if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market.

The Exchange proposes procedures for the DMMs to follow when required to publish the pre-opening indications, including the requirement to obtain supervision and approval of a Floor governor, the requirement to update pre-opening indication under certain circumstances, the need to use best efforts to narrow the width of the spread, the need for a delay between publishing a pre-opening indication and opening trading, guidelines on trading halts, and the process for reopening after a trading pause due to the Limit-Up-Limit-Down mechanism.

The Exchange also proposes to allow the Exchange's CEO to temporarily suspend the requirement to publish pre-opening indications if the CEO determines that a Floor wide event is likely to impair the DMM's ability to arrange for a fair and orderly opening. When invoking this provision, the CEO must notify the Exchange's Chief Regulatory Officer ("CRO") and must inform Commission staff as promptly as possible. Even when relieved of the obligation to publish pre-opening indications, a DMM or the Exchange may publish a pre-opening indication for one or more securities.[17]

2. Opening Process

The Exchange proposes to codify in its rulebook the circumstances under which a DMM may not open a security electronically. Under the proposed amendments, a DMM would not be able to open a security electronically: (1) If there is manually entered Floor interest; or (2) if the opening transaction would be at a price more than 4% away from the reference price or the opening transaction volume would be more than: (a) 150,000 shares (for securities with average opening volume of 100,000 shares or less in the previous calendar quarter) or (b) 500,000 shares (for securities with average opening volume of over 100,000 shares in the previous calendar quarter). However, if the 9:00 a.m. E-mini S&P 500 Futures price is 2% away from the prior day's closing price, or if the Exchanges determines that it is necessary or appropriate for the maintenance of a fair and orderly market, then a DMM may open electronically at a price up to 8% away from the reference price, and no volume limitation would apply to the opening transaction.

The Exchange also proposes to allow the Exchange CEO to temporarily suspend (a) the price limits within which DMMs may open electronically and (b) the need to for a DMM to obtain prior Floor official approval to reopen trading electronically following a market-wide trading halt. As with the suspension of the requirement to publish a pre-opening indication, the CEO would need to consider the relevant facts and circumstances, to notify the Exchange's CRO, and to inform Commission staff.

3. Conforming Changes

In addition to the changes described above, the Exchange proposes conforming changes to Exchange Rules 80C, 124, and 9217.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[19] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange has provided statistics describing how the proposed modified rules for pre-opening indication and opening procedures would have affected market openings on selected periods in the past. In particular, the Exchange provided statistics describing how the modified rules would have affected the Exchange's opening on August 24, 2015, a day that featured unusual volatility in the equities markets surrounding the 9:30 a.m. opening.[20] According to the Exchange, on August 24, 2015, 638 stocks listed on the NYSE (or 19.37% of all NYSE-listed stocks) were subject to NYSE Rule 123D mandatory indication requirements, but, under the new proposed parameters of NYSE Rule 15 applicable on a volatile trading day (*i.e.*, the proposed 10% parameter) only 278 NYSE-listed stocks (or 8.44% of all NYSE-listed stocks) would have required the publication of pre-opening indications.[21] Additionally, the Exchange's statistical analysis shows that, while 1,682 NYSE-listed stocks on August 24, 2015, exceeded the parameters within which Exchange systems would permit DMMs to conduct an electronic open, the new proposed parameters of NYSE Rule 123D would have permitted DMMs to open all but 573 NYSE-listed stocks electronically.[22]

The Commission believes that the Exchange's proposed modifications to its opening procedures are consistent with the requirements of the Act, because the proposed modifications should provide greater clarity to all market participants about the circumstances in which DMMs have the discretion to open trading electronically and because they are reasonably designed to enhance the ability of DMMs to open (and reopen) trading on the Exchange in a timely fashion, particularly on days with high market volatility, which should help to remove impediments to and perfect the mechanism of a free and open market and a national market system.[23]

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[17] The Exchange also proposes to increase the frequency with which the Exchange disseminates Order Imbalance Information between 9:20 a.m. ET and the opening of trading for that security from every 15 seconds to every 5 seconds. Additionally, the Exchange's proposal would provide that, unless otherwise specified, all references in Rule 15 to an opening transaction would also include a reopening transaction following a trading halt or pause in a security.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Research Note: Equity Market Volatility on August 24, 2015, prepared by the Staff of the Office of Analytics and Research, Division of Trading and Markets, Commission (available at *https://www.sec.gov/marketstructure/research/equity_market_volatility.pdf*).

[21] *See* Table 2, Notice, *supra* note 5.

[22] *See* Table 5, Notice, *supra* note 5.

The Exchange has also proposed procedures for publication of the pre-opening indications and proposed to provide the Exchange CEO with the power to temporarily suspend the publication of pre-opening indications. The Commission believes that the Exchange's proposed procedures for the publication of pre-opening publications are reasonably designed to ensure that pre-opening procedures are more expeditious. The Commission further believes that providing the Exchange CEO under certain circumstances with the ability to temporarily suspend the requirement for pre-opening indications, as well as the price and volume parameters surrounding electronic openings by DMMs, is reasonably designed to enhance the ability of the Exchange to conduct orderly openings (and reopenings) under conditions of extreme market-wide volatility.

For the above reasons, the Commission finds that the proposal, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act.

IV. Solicitation of Comments on Partial Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Partial Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–24 and should be submitted on or before August 1, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendments No. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 2 and 3, prior to the 30th day after the date of publication of notice of Partial Amendment No. 3 in the **Federal Register**. In Partial Amendment No. 3, the Exchange: (1) Stated its belief that securities with an average daily volume of over 500,000 shares at the open warrant manual openings because such high volume is likely to involve block-sized trades and a manual opening allows the Exchange's Floor brokers to solicit block-sized interest to participate in the opening; (2) replaced the term "order" with "orderly" in proposed NYSE Rules 15(d)(2) and 123D(1)(a)(B)(ii); (3) replaced the term "consult with" with the term "notify" in proposed NYSE Rules 15(f)(2)(B) and 123D(c)(2)(B) to describe the action the CEO of the Exchange must take if a determination is made to suspend the requirements under those rules; and (4) clarified that the filing's previous reference to "consult with" the Chief Regulatory Officer ("CRO") of the Exchange did not intend to create a requirement for the CEO of the Exchange to obtain the CRO's approval to make a determination under proposed NYSE Rules 15(f)(2)(B) and 123D(c)(2)(B).

The Commission believes that the revisions proposed in Partial Amendment No. 3 are designed to clarify the meaning of the proposed rules and do not raise any new novel regulatory issues. Therefore, the Commission finds that Partial Amendment No. 3 is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[24] to approve the proposed rule change, as modified by Amendments No. 2 and 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSE–2016–24), as modified by Amendments No. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16272 Filed 7–8–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to fund grant applications for 22 existing Small Business Development Centers (SBDCs) beginning October 1, 2016 subject to the availability of funds. A description of the SBDC program is contained in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected funding date. The SBDCs mailing addresses listed below are participating in the intergovernmental review process. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding funding of an SBDC within 30 days from the date of publication of this notice. Please address any comments to the relevant SBDC State Director listed below.

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[23] The Commission also believes that providing for more frequent dissemination of the Order Imbalance Information to market participants during the period immediately before the open should assist the Exchange in conducting an orderly opening auction.

[24] 15 U.S.C. 78s(b)(2).

[25] *Id.*

[26] 17 CFR 200.30–3(a)(12).

ADDRESSES:

ADDRESSES OF RELEVANT SBDC STATE DIRECTORS

Mr. Rande Kessler, SBDC State Director, University of Louisiana, Monroe 700, University Avenue, Admin 2–101, Monroe, LA 71209–6435, (318) 342–5506.

Mr. Mike Bowman, SBDC State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711, (302) 831–4283.

Ms. Becky Naugle SBDC, State Director University of Kentucky, One Quality Street, Lexington, KY 40507, (859) 257–7668.

Mr. Chris Bouchard, SBDC State Director, University of Missouri, 410 South Sixth Street, 200 Engineering North, Columbia, MO 65211, (573) 884–1555.

Mr. John Osoinach, SBDC State Director, University of the Virgin Islands, 8000 Niskey Center, Suite 720, St. Thomas, USVI 00802–5804, (340) 776–3206.

Ms. Kristina Oliver, SBDC State Director, West Virginia Development Office, 1900 Kanawha Blvd., Capitol Complex, Building 6, Room 652, Charleston, WV 25305, (304) 558–2960.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, 416 Ponce de Leon Avenue, Union Plaza, Seventh Floor, San Juan, PR 00918, (787) 763–6811.

Ms. Rene Sprow, SBDC State Director, Univ. of Maryland, 7100 Baltimore Avenue, Suite 402, College Park, MD 20740, (301) 403–8300.

Ms. Lisa Shimkat, SBDC State Director, Iowa State University, 2321 North Loop Drive, Suite 202, Ames, IA 50010–8218, (515) 294–2037.

FOR FURTHER INFORMATION CONTACT: Vicky Mundt, Deputy Associate Administrator, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

Small Business Development Centers (SBDCs) provide a wide array of technical assistance to small businesses and aspiring entrepreneurs supporting business performance and sustainability and enhancing the creation of new businesses entities. These small businesses in turn foster local and regional economic development through job creation and retention as a result of the extensive one-on-one long-term counseling, training and specialized services they receive from the SBDCs. The SBDCs are made up of a unique collaboration of SB A, state and local governments, and private sector funding resources.

SBDCs provide clients with professional business assistance regarding business plans, market research, financial preparation packages, cash flow, and procurement contracts. Special emphasis areas include: Manufacturing; international trade and export assistance; e-commerce; technology transfer; assistance for veterans, both active duty and personnel returning from deployment; disaster recovery assistance; IRS, EPA, and OSHA regulatory compliance; as well as research and development. Based on client needs, business trends and individual business requirements, SBDCs modify their services to meet the evolving needs through more than 900 local service delivery points across the nation and all U.S. Territories.

SBDCs deliver these services to small business concerns using an effective education network of 63 Lead Centers reaching out to both rural and urban areas, serving entrepreneurs of all types throughout a state or region. SBDCs can be found in every U.S. state, the District of Columbia, Guam, Puerto Rico, American Samoa and the U.S. Virgin Islands. SBDCs provide professional business counseling free of charge along with low cost training.

To reach the millions of small businesses across the U.S., SBDC assistance is available virtually anywhere: From rural circuit riders in Alaska to marine services in the Outer Banks of North Carolina. Many centers are located within or are co-located with: Local economic development entities; chambers of commerce; Department of Defense's Procurement Technical Assistance Centers; The Department of Commerce's Manufacturing Extension Partnership sites; and community colleges. Some SBDCs also have International Trade Centers and some are classified by a special emphasis on Technology.

Lead Center SBDCs hosts include:

- 49 University-sponsored Lead SBDCs
  2 SBDC locations are located at Historically Black Colleges and Universities (Howard University in Washington, DC and the University of the Virgin Islands, U.S.V.I.)
- 7 Community college-sponsored Lead SBDCs
  Dallas-TX, OR, NM, AZ, San Diego-CA, Los Angeles, CA, and American Samoa
- 7 State-sponsored Lead SBDCs (CO, IL, IN, MN, MT, OH, & WV)

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the nation's small business communities;
(b) increase local economic growth;
(c) ensure inclusiveness by broadening the impact of SBDC technical assistance to underserved markets.

SBDC Program Organization

Through a partnership between SBA and institutions of higher education and state government, a network of 63 lead SBDCs are managed by the Office of Small Business Development Centers (OSBDC). The local District Offices have a Project Officer to ensure each SBDC provides quality services and is in compliance with its negotiated Cooperative Agreement with the SBA. OSBDC has six Program Managers who each have a portfolio of 10–12 SBDCs for which they are responsible for SBDC performance management. OSBDC also has three Grants Managers along with a finance staff who oversee the issuance and budget aspects of the Cooperative Agreement. SBDCs operate on the basis of an annual proposed plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must match Federal funds by 1:1.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, supporting local small business needs, SBA priorities and established SBDC program objectives. Services include training and professional business advising to existing and prospective small business owners in all areas of small firm establishment and growth, including:

Management; online and social media and marketing; finance and access to capital; exporting and international trade; manufacturing; and business operations, including disaster mitigation.

The SBA district office and the SBDC negotiate annually through this funding announcement the specific mix of services and best use of program funds to meet mutually agreed upon annual milestones, giving particular attention to SBA's annual priorities and special emphasis groups, including veterans, women, the disabled, and other minorities.

SBDC Program Requirements

An SBDC must meet required programmatic and financial requirements established by statute, regulations, other program directive and its Cooperative Agreement. Following these guidelines an SBDC must:

(a) Provide services that are as accessible to all persons, especially those who identify as disabled;

(b) open all service centers during normal business hours of the community or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) develop working relationships with financial institutions, the investment communities, professional associations, private consultants and local small business groups;

(d) establish a lead center which operates and oversees a statewide or regional network of SBDC service centers;

(e) have a full-time Director; and

(f) expend at least 80 percent of the Federal funds to provide direct client services to small businesses.

Dated: June 24, 2016.

Adriana Menchaca-Gendron,

Associate Administrator for Business Development Centers.

[FR Doc. 2016–16290 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14708 and #14709]

Texas Disaster Number TX–00468

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4269–DR), dated 04/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 and continuing through 04/30/2016.

Effective Date: 06/29/2016.

Physical Loan Application Deadline Date: 06/24/2016.

EIDL Loan Application Deadline Date: 01/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 04/25/2016 is hereby amended to re-establish the incident period for this disaster as beginning 04/17/2016 and continuing through 04/30/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16286 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14708 and #14709]

Texas Disaster Number TX–00468

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4269–DR), dated 04/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 through 04/30/2016.

Effective Date: 06/29/2016.

Physical Loan Application Deadline Date: 06/24/2016.

EIDL Loan Application Deadline Date: 01/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of TEXAS, dated 04/25/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Anderson, Cherokee, Smith, Wood.
Contiguous Counties: (Economic Injury Loans Only):
Texas: Angelina, Camp, Franklin, Freestone, Gregg, Henderson, Hopkins, Houston, Leon, Nacogdoches, Rains, Rusk, Upshur, Van Zandt.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16287 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14749 and #14750]

West Virginia Disaster Number WV–00043

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4273–DR), dated 06/25/2016.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 06/22/2016 and continuing.

Effective Date: 06/29/2016.

Physical Loan Application Deadline Date: 08/24/2016.

EIDL Loan Application Deadline Date: 03/27/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of West Virginia, dated 06/25/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Pocahontas, Webster.

Contiguous Counties: (Economic Injury Loans Only):

West Virginia: Lewis, Pendleton, Randolph, Upshur.

Virginia: Highland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16283 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to fund grant applications for 41 existing Small Business Development Centers (SBDCs) beginning January 1, 2017 subject to the availability of funds. A description of the SBDC program is contained in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected funding date. The SBDCs mailing addresses listed below are participating in the intergovernmental review process. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding funding of an SBDC within 30 days from the date of publication of this notice. Please address any comments to the relevant SBDC State Director listed below.

ADDRESSES:

ADDRESSES OF RELEVANT SBDC STATE DIRECTORS

Mr. James Yerka, Acting SBDC State Director, Utah State University, 9750 South 300 West, Sandy, UT 84070 (801) 957–5257.

Ms. Michele Abraham, SBDC State Director, University of South Carolina, 1705 College Street Columbia, SC 29208, (803) 777–4555.

Ms. Diane R. Howerton, SBDC Regional Director, University of California, Merced, 550 East Shaw, Suite 100, Fresno, CA 93710, (559) 241–6590.

Mr. Marquise Jackson, Acting SBDC Regional Director, Southwestern Community College, 880 National City Blvd., National City, CA 91950, (619) 216–6718.

Mr. Casey Jeszenka, SBDC Network Director, University of Guam, P.O. Box 5014—U.O.G. Station, Mangilao, GU 96923, (671) 735–2590.

Mr. Dan Ripke, SBDC Regional Director, California State University Chico, Building 35, CSU Chico, Chico, CA 95929, (530) 898–4598.

Mr. Michael Daniel, SBDC Regional Director, Orange County/Inland Empire Network, 800 North State College Blvd., SGMH 53, Fullerton, CA 92831, (657) 278–5138.

Ms. Laura Fine, Acting SBDC State Director, University of Arkansas, 2801 South University Avenue, Little Rock, AR 72204, (501) 683–7700.

Mr. Allan Adams, SBDC, State Director University of Georgia Chicopee Complex, 1180 East Broad Street Athens, GA 30602, (706) 542–6762.

Mr. Rich Grogan, SBDC State Director, University of New Hampshire, 10 Garrison Ave. Durham, NH 03824, (603) 862–1446.

Mr. Herbert Thweatt, SBDC Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, (684) 699–4830.

Mr. Michael Myhre, SBDC State Director, University of West Florida, 11000 University Parkway, Bldg. 38, Pensacola, FL 32514, (850) 473–7802.

Mr. Sam Males, SBDC State Director, University of Nevada Reno, College of Business Admin., Room 441, Reno, NV 89557–0100, (775) 784–1717.

Mr. Patrick Nye, Acting SBDC Regional Director, Long Beach Community College, 4901 E Carson Street, MC 05, Long Beach, CA 90808, (562) 938–5020.

Ms. Kristin Johnson, SBDC Regional Director, Humboldt State University, Office of Economic & Community Dev., 1 Harpst Street, House 71, Room 110, Areata, CA 95521, (707) 826–3920.

Ms. Janice Washington, SBDC State Director, Maricopa County Comm. College, 2411 West 14th Street, Suite 132, Tempe, AZ 85281–6942, (480) 731–8722.

Mr. Carl Brown, SBDC Executive Director, Howard University, 2600 6th Street NW., Washington, DC 20059, (202) 806–1550.

Mr. David Martin, SBDC State Director, University of North Dakota, 140 Gamble Hall, 293 Centennial Drive, Stop 7308, Grand Forks, ND 58202, (701) 715–2475.

Mr. Edward Huttenhower, SBDC Executive Director, University of Rhode Island, 75 Lower College Road, Kingston, RI 02881, (401) 874–5936.

Mr. Keith Brophy, State Director, 1034 L. William Seidman Center, 50 Front Avenue SW., Grand Rapids, MI 49504, (616) 331–7371.

FOR FURTHER INFORMATION CONTACT: Vicky Mundt, Deputy Associate Administrator, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

Small Business Development Centers (SBDCs) provide a wide array of technical assistance to small businesses and aspiring entrepreneurs supporting business performance and sustainability and enhancing the creation of new businesses entities. These small businesses in turn foster local and regional economic development through job creation and retention as a result of the extensive one-on-one long-term counseling, training and specialized services they receive from the SBDCs. The SBDCs are made up of a unique collaboration of SB A, state and local governments, and private sector funding resources.

SBDCs provide clients with professional business assistance regarding business plans, market research, financial preparation packages, cash flow, and procurement contracts. Special emphasis areas include: Manufacturing; international trade and export assistance; e-commerce; technology transfer; assistance for veterans, both active duty and personnel returning from deployment; disaster recovery assistance; IRS, EPA, and OSHA regulatory compliance; as well as research and development. Based on client needs, business trends and individual business requirements, SBDCs modify their services to meet the evolving needs through more than 900 local service delivery points across the nation and all U.S. Territories.

SBDCs deliver these services to small business concerns using an effective education network of 63 Lead Centers reaching out to both rural and urban areas, serving entrepreneurs of all types throughout a state or region. SBDCs can be found in every U.S. state, the District of Columbia, Guam, Puerto Rico, American Samoa and the U.S. Virgin Islands. SBDCs provide professional business counseling free of charge along with low cost training.

To reach the millions of small businesses across the U.S., SBDC assistance is available virtually anywhere: From rural circuit riders in Alaska to marine services in the Outer Banks of North Carolina. Many centers are located within or are co-located with: Local economic development entities; chambers of commerce; Department of Defense's Procurement Technical Assistance Centers; The Department of Commerce's Manufacturing Extension Partnership sites; and community colleges. Some SBDCs also have International Trade Centers and some are classified by a special emphasis on Technology.

Lead Center SBDCs hosts include:

- 49 University-sponsored Lead SBDCs.

2 SBDC locations are located at Historically Black Colleges and Universities (Howard University in Washington, DC and the University of the Virgin Islands, U.S.V.I.).

- 7 Community college-sponsored Lead SBDCs.

Dallas-TX, OR, NM, AZ, San Diego-CA, Los Angeles, CA, and American Samoa.

- 7 State-sponsored Lead SBDCs (CO, IL, IN, MN, MT, OH, & WV).

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the nation's small business communities;

(b) increase local economic growth;

(c) ensure inclusiveness by broadening the impact of SBDC technical assistance to underserved markets.

SBDC Program Organization

1. Through a partnership between SBA and institutions of higher education and state government, a network of 63 lead SBDCs are managed by the Office of Small Business Development Centers (OSBDC). The local District Offices have a Project Officer to ensure each SBDC provides quality services and is in compliance with its negotiated Cooperative Agreement with the SBA. OSBDC has six Program Managers who each have a portfolio of 10–12 SBDCs for which they are responsible for SBDC performance management. OSBDC also has three Grants Managers along with a finance staff who oversee the issuance and budget aspects of the Cooperative Agreement. SBDCs operate on the basis of an annual proposed plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must match Federal funds by 1:1.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, supporting local small business needs, SBA priorities and established SBDC program objectives. Services include training and professional business advising to existing and prospective small business owners in all areas of small firm establishment and growth, including: Management; online and social media and marketing; finance and access to capital; exporting and international trade; manufacturing; and business operations, including disaster mitigation.

The SBA district office and the SBDC negotiate annually through this funding announcement the specific mix of services and best use of program funds to meet mutually agreed upon annual milestones, giving particular attention to SBA's annual priorities and special emphasis groups, including veterans, women, the disabled, and other minorities.

SBDC Program Requirements

An SBDC must meet required programmatic and financial requirements established by statute, regulations, other program directive and its Cooperative Agreement. Following these guidelines an SBDC must:

(a) Provide services that are accessible to all persons, especially those who identify as disabled;

(b) open all service centers during normal business hours of the community or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) develop working relationships with financial institutions, the investment communities, professional associations, private consultants and local small business groups;

(d) establish a lead center which operates and oversees a statewide or regional network of SBDC service centers;

(e) have a full-time Director; and

(f) expend at least 80 percent of the Federal funds to provide direct client services to small businesses.

Dated: June 24, 2016.

Adriana Menchaca-Gendron,

Associate Administrator for Small Business Development Centers.

[FR Doc. 2016–16291 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14740 and #14741]

Texas Disaster Number TX–00473

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4269–DR), dated 06/03/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 through 04/30/2016.

Effective Date: 06/29/2016.

Physical Loan Application Deadline Date: 08/02/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 06/03/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anderson, Cass, Cherokee, Fort Bend, Harrison, Jones, Liberty, Smith, Upshur, Van Zandt, Wood.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16285 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14740 and #14741]

Texas Disaster Number TX–00473

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4269–DR), dated 06/03/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 through 04/30/2016.

Effective Date: 06/29/2016.

Physical Loan Application Deadline Date: 08/02/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 06/03/2016, is hereby amended to re-establish the incident period for this disaster as beginning 04/17/2016 and continuing through 04/30/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16288 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14744 and #14745]

TEXAS Disaster Number TX–00472

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4272–DR), dated 06/11/2016.

Incident: Severe Storms and Flooding.

Incident Period: 05/26/2016 through 06/24/2016.

Effective Date: 06/29/2016.

Physical Loan Application Deadline Date: 08/10/2016.

EIDL Loan Application Deadline Date: 03/11/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 06/11/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Fayette, Harris, Kleberg, Palo Pinto, Parker.
Contiguous Counties: (Economic Injury Loans Only):
Texas: Gonzales, Jack, Jim Wells, Lavaca, Nueces, Tarrant, Wise.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16284 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14749 and #14750]

West Virginia Disaster Number WV–00043

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4273–DR), dated 06/25/2016.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 06/22/2016 and continuing.

Effective Date: 06/28/2016.

Physical Loan Application Deadline Date: 08/24/2016.

EIDL Loan Application Deadline Date: 03/27/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of West Virginia, dated 06/25/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Clay, Fayette, Monroe, Roane, Summers.
Contiguous Counties: (Economic Injury Loans Only):
West Virginia: Calhoun, Mercer, Wirt.
Virginia: Craig, Giles.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16282 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14749 and #14750]

West Virginia Disaster #WV–00043

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4273–DR), dated 06/25/2016.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 06/22/2016 and continuing.

Effective Date: 06/25/2016.

Physical Loan Application Deadline Date: 08/24/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/27/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2016, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Greenbrier, Kanawha, Nicholas.

Contiguous Counties (Economic Injury Loans Only):

West Virginia; Boone, Braxton, Clay, Fayette, Jackson, Lincoln, Monroe, Pocahontas, Putnam, Raleigh, Roane, Summers, Webster, Virginia, Alleghany, Bath.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.250
Homeowners without Credit Available Elsewhere	1.625
Businesses with Credit Available Elsewhere	6.250
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 147496 and for economic injury is 147500.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16281 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14744 and #14745]

Texas Disaster Number TX–00472

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4272–DR), dated 06/11/2016.

Incident: Severe Storms and Flooding.

Incident Period: 05/26/2016 and continuing through 06/24/2016.

Effective Date: 06/24/2016.

Physical Loan Application Deadline Date: 08/10/2016.

EIDL Loan Application Deadline Date: 03/11/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 06/11/2016 is hereby amended to establish the incident period for this disaster as beginning 05/26/2016 and continuing through 06/24/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–16289 Filed 7–8–16; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: May 1–31, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad I, ABR–201111014.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: May 2, 2016.
2. Range Resources-Appalachia, LLC, Pad ID: Null, Eugene Unit #2H–#7H Drilling Pad, ABR–201104011.R1, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 2, 2016.
3. Seneca Resources Corporation, Pad ID: Gamble Pad C Alt, ABR–201605001, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 2, 2016.
4. SWEPI, LP, Pad ID: Butler 853, ABR–201103037.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 2, 2016.
5. Chesapeake Appalachia, LLC, Pad ID: Donovan, ABR–201110016.R1, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 2, 2016.
6. Chesapeake Appalachia, LLC, Pad ID: Gardner, ABR–201110020.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 2, 2016.
7. Chesapeake Appalachia, LLC, Pad ID: Laurel, ABR–201110004.R1, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 2, 2016.
8. Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad E, ABR–201105013.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 5, 2016.
9. Anadarko E&P Onshore, LLC, Pad ID: Larrys Creek F&G Pad H, ABR–201106019.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 5, 2016.
10. Anadarko E&P Onshore, LLC, Pad ID: H. Lyle Landon Pad A, ABR–201106020.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 5, 2016.
11. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 728 Pad B, ABR–201106027.R1, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 5, 2016.
12. Range Resources-Appalachia, LLC, Pad ID: Gulf USA #63H Drilling Pad, ABR–201103043.R1, Snow Shoe Township, Centre County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: May 5, 2016.
13. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad G, ABR–201109005.R1, McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: May 5, 2016.

14. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad H, ABR–201111013.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: May 5, 2016.

15. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 729 Pad B, ABR–201111015.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: May 5, 2016.

16. Cabot Oil & Gas Corporation, Pad ID: VandermarkR P1, ABR–201107029.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: May 11, 2016.

17. Chief Oil & Gas LLC, Pad ID: Elliott B Drilling Pad #1, ABR–201109030.R1, Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: May 11, 2016.

18. SWEPI, LP, Pad ID: M L Mitchell Trust 554, ABR–201103017.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 11, 2016.

19. SWEPI, LP, Pad ID: Salevsky 335, ABR–201103046.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 11, 2016.

20. Cabot Oil & Gas Corporation, Pad ID: GreenwoodR P2, ABR–201605002, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: May 13, 2016.

21. Chief Oil & Gas LLC, Pad ID: Kerr B Drilling Pad #1, ABR–201109031.R1, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: May 13, 2016.

22. EOG Resources, Inc., Pad ID: PHC Pad DD, ABR–201103025.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 13, 2016.

23. EOG Resources, Inc., Pad ID: PHC Pad CC, ABR–201103027.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 13, 2016.

24. EOG Resources, Inc., Pad ID: PHC Pad BB, ABR–201103028.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 13, 2016.

25. EOG Resources, Inc., Pad ID: COP Pad S, ABR–201103029.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 13, 2016.

26. EOG Resources, Inc., Pad ID: HOUSER 1H Pad, ABR–201107018.R1, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 13, 2016.

27. EOG Resources, Inc., Pad ID: CRANE Pad, ABR–201107023.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: May 13, 2016.

28. SWN Production Company, LLC, Pad ID: Price Pad, ABR–201104017.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

29. SWN Production Company, LLC, Pad ID: Lyncott Corp Pad, ABR–201107044.R1, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

30. SWN Production Company, LLC, Pad ID: Bark'em Squirrel Pad, ABR–201107045.R1, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

31. SWN Production Company, LLC, Pad ID: Cramer Pad, ABR–201108007.R1, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

32. SWN Production Company, LLC, Pad ID: Roman Pad, ABR–201108020.R1, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

33. SWN Production Company, LLC, Pad ID: Folger Pad, ABR–201108022.R1, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

34. SWN Production Company, LLC, Pad ID: Grizzanti Pad, ABR–201108023.R1, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: May 17, 2016.

35. Talisman Energy USA Inc, Pad ID: 05 253 Senn W, ABR–201106001.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: May 17, 2016.

36. Chesapeake Appalachia, LLC, Pad ID: Alkan, ABR–201110021.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 25, 2016.

37. Chesapeake Appalachia, LLC, Pad ID: Bodolus, ABR–201111028.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: May 25, 2016.

38. Chief Oil & Gas LLC, Pad ID: Kuziak Drilling Pad #1, ABR–201107028.R1, Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: May 25, 2016.

39. Chief Oil & Gas LLC, Pad ID: Savage Drilling Pad #1, ABR–201108018.R1, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: May 25, 2016.

40. Chief Oil & Gas LLC, Pad ID: Yonkin Drilling Pad #1, ABR–201109020.R1, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: May 25, 2016.

41. SWEPI, LP, Pad ID: Root #1, ABR–201605003, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 25, 2016.

42. SWEPI, LP, Pad ID: Hector 2, ABR–201605004, Hector Township, Potter County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 25, 2016.

43. Seneca Resources Corporation, Pad ID: DCNR 007 Pad G, ABR–201605005, Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: May 25, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: July 6, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–16324 Filed 7–8–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2015–0508]

Agency Information Collection Activities; Extension of a Currently-Approved Collection: Driver Qualification Files

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. On February 17, 2016, FMCSA published a **Federal Register** notice announcing an increase in the Agency's estimate of the total information-collection (IC) burden of the driver qualification (DQ) regulations. It explained that the Agency's regulations had not changed,

but the Agency was increasing its estimate of the IC burden to 9.8 million hours because both the population of CMV drivers and the frequency of their hiring had increased. Today the Agency further increases its burden estimate to 10.21 million hours in response to a comment received to that notice.

DATES: Please send your comments to this notice by August 10, 2016. OMB must receive your comments by this date to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2015–0508. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the OMB Desk Officer, DOT/FMCSA, and sent via electronic mail to *oira_submission@omb.eop.gov,* faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, FMCSA Driver and Carrier Operations Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Driver Qualification Files.

OMB Control Number: 2126–0004.

Type of Request: Extension of a currently-approved information collection.

Respondents: Motor carriers and drivers of commercial motor vehicles.

Estimated Number of Respondents: 6.2 million (5.7 million drivers and .5 million motor carriers.

Estimated Time per Response: 35 minutes (average).

Expiration Date: July 31, 2016.

Frequency of Response: Responses to some regulatory requirements of the driver qualification rules occur on a random basis. Other responses occur more predictably. Some responses recur; others do not. For example, motor carriers are required to obtain and review the motor vehicle driving record of their drivers from the State of licensure. They must complete this task at the time of hiring and every year thereafter. The time-of-hiring requirement results in a random frequency of response, but, thereafter, the annual requirement results in a fixed frequency of response.

Estimated Total Annual Burden: 10.21 million hours.

Background

The Motor Carrier Safety Act of 1984 [Pub. L. 98–554, Title II, 98 Stat. 2834 (October 30, 1984)] requires the Secretary of Transportation to issue regulations pertaining to commercial motor vehicle (CMV) safety. These regulations are also issued under the authority provided by 49 U.S.C. 504, 31133, 31136, and 31502. Part 391 of volume 49 of the Code of Federal Regulations contains the minimum qualifications of drivers of CMVs in interstate commerce.

Motor carriers may not require or permit an unqualified driver to operate a CMV. The foremost proof of driver qualification is the information that part 391 requires be collected and maintained in the driver qualification file (DQ file). Motor carriers must obtain this information from sources specified in the regulations (49 CFR 391.51), such as the driver, previous employers of the driver, and officials of the State of driver licensure. Motor carriers are not required to forward DQ information to FMCSA, but must maintain the information in a DQ file and make it available to State and Federal safety investigators on demand.

The Agency is asking OMB to approve FMCSA's revised estimate of the paperwork burden imposed by its DQ file regulations. The regulations have not been amended; the information-collection (IC) burden imposed on individual drivers and motor carriers by the regulations is unchanged. However, the Agency has increased its estimate of the total IC burden of the DQ-file regulations because both the number of CMV drivers and the turnover rate in their hiring have increased since the Agency's 2012 estimate of this burden. The increase in the number of CMV drivers is partly the result of the Agency being directed by OMB to include intrastate as well as interstate drivers in the population of drivers incurring an IC burden under the DQ file regulations. The Agency had excluded intrastate drivers from a past estimate.

The Agency received one comment to the 60-day **Federal Register** notice of February 17, 2016. The American Trucking Associations pointed out that FMCSA estimates did not account for the substantial portion of driver medical certificates that are not issued for the maximum two-year period. Accordingly, FMCSA has adjusted its estimate for this element of the burden. The overall burden, formerly estimated to be 9.8 million hours, is now estimated to be 10.21 million hours.

ATA also asked that Agency estimates account for the burden of a practice it described as common among motor carriers. These carriers refer newly-hired drivers for medical examination even if their current medical certificate is still valid. This practice triggers the requirement of § 391.51(b)(7)(ii) that motor carriers obtain the results of each medical examination of its CDL drivers from the State Driver Licensing Agency (SDLA). The medical status of CDL drivers is a part of the driver's motor vehicle record (MVR) maintained by the SDLA. ATA asked the Agency to account for the burden these carriers experience obtaining the MVRs of their newly-hired CDL drivers. The Agency cannot do so because the burden is not cognizable under the PRA. The PRA requires Agencies to estimate burdens imposed by their regulatory requirements but these medical examinations of newly hired drivers are not required by regulation. These motor carriers are voluntarily referring newly-hired CDL drivers for a new medical examination.

Public Comments Invited

FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions, (2) the accuracy of the estimated burden, (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information, and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87 on: June 30, 2016.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2016–16313 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0066]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GAMETIME; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 10, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0066. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GAMETIME is:

Intended Commercial Use Of Vessel: "UPV, For Charter (sport fishing) fishing, on the Inland Great Lakes"

Geographic Region: "Wisconsin, Michigan"

The complete application is given in DOT docket MARAD–2016–0066 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 30, 2016.

Gabriel Chavez,

Secretary, Maritime Administration.

[FR Doc. 2016–16315 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0061]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SANDPIPER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 10, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0061. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SANDPIPER is: Intended Commercial Use of Vessel: "Weekend Captained Sailing Charters" Geographic Region: "Minnesota, Wisconsin and Michigan" The complete application is given in DOT docket MARAD–2016–0061 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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By Order of the Maritime Administrator.

Dated: June 30, 2016.

Gabriel Chavez,

Secretary, Maritime Administration.

[FR Doc. 2016–16261 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0070]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MICHELINE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 10, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0070. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MICHELINE is:

Intended Commercial Use of Vessel: “Private Vessel Charters”.

Geographic Region: “Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound])”.

The complete application is given in DOT docket MARAD–2016–0070 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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By Order of the Maritime Administrator.

Dated: June 30, 2016.

Gabriel Chavez,

Secretary, Maritime Administration.

[FR Doc. 2016–16264 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0068]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PURRFECT GETAWAY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 10, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0068. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *PURRFECT GETAWAY* is:

Intended Commercial Use of Vessel: “Catamaran tours and cruises.”

Geographic Region: “California.”

The complete application is given in DOT docket MARAD–2016–0068 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 30, 2016.

Gabriel Chavez,

Secretary, Maritime Administration.

[FR Doc. 2016–16317 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0067]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WALKABOUT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 10, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WALKABOUT is:

Intended Commercial Use Of Vessel: "Fishing charters and sightseeing tours"

Geographic Region: "Virginia, North Carolina, South Carolina, Georgia, Florida"

The complete application is given in DOT docket MARAD–2016–0067 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 30, 2016.

Gabriel Chavez,

Secretary, Maritime Administration.

[FR Doc. 2016–16314 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0065]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OH JOY II; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 10, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0065. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OH JOY II is: INTENDED COMMERCIAL USE OF VESSEL: "Crewed day sails and crewed sail charters" GEOGRAPHIC REGION: "WASHINGTON STATE, OREGON, CALIFORNIA" The complete application is given in DOT docket MARAD–2016–0065 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 30, 2016.

Gabriel Chavez,

Secretary, Maritime Administration.

[FR Doc. 2016–16263 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N —New application
M —Modification request
R —Renewal Request
P —Party To Exemption Request

Issued in Washington, DC, on June 28, 2016.

Ryan Paquet,

Director, Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
16412–M	Nantong CIMC Tank Equipment Co. Ltd., Jiangsu, Province	4	07–31–2016
13192–M	Thomas Gray & Associaties, Inc., Orange, CA	4	07–31–2016
16035–M	LCF Systems, Inc., Scottsdale, AZ	4	07–31–2016
7607–M	Thermo Fisher Scientific, Franklin, MA	4	07–31–2016
15537–M	Alaska Pacific Powder Company, Watkins, CO	4	07–31–2016
15610–M	TechKnowServ Corp., State College, PA	4	07–31–2016
	New Special Permit Applications		
16559–N	HTEC Hydrogen Technology & Energy Corporation, North Vancouver, BC, Canada	4	07–30–2016
16615–N	Special Devices, Incorporated, Simi Valley, CA	4	07–31–2016
16524–N	Quantum Fuel Systems Technologies, Worldwide, Inc., Lake Forest, CA	4	07–15–2016
16620–N	Westeel Canada Inc., Winnipeg, Canada	4	07–31–2016
15767–N	Union Pacific Railroad Company, Omaha, NE	3	07–31–2016
	Party to Special Permits Application		
12412–P	Seaco Technologies, Inc., Bakersfield, CA	4	07–31–2016
	Renewal Special Permits Applications		
7991–R	Progress Rail Services, Corporation, Albertville, AL	4	07–31–2016

[FR Doc. 2016–16070 Filed 7–8–16; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Actions on Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the

time certain special permits were issued.

Issued in Washington, DC, on June 28, 2016.

Ryan Paquet,

Director, Approvals and Permits.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
14751–M	Univation Technologies, LLC, Houston, TX.	49 CFR 173.242	To modify the special permit to authorize adding additional drawings.
NEW SPECIAL PERMIT GRANTED			
16571–N	Chevron USA Inc., Picayune, MS.	49 CFR 172.101 Hazardous Materials Table Column (9A).	To authorize the transportation in commerce of certain hazardous materials which exceed the authorized quantity limitations or are forbidden aboard passenger-carrying aircraft. (mode 5)
DENIED			
16495–N	Request by TransRail Innovation Inc. Calgary, May 06, 2016. To authorize the manufacture, installation, and service trials of 50 rail tank cars containing Class 3 hazardous materials each with a sensor device mounted to the rail tank car prior to, or in conjunction with, the completion of tile quality assurance program for the tank car facility.		

[FR Doc. 2016–16068 Filed 7–8–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its eighth meeting on Thursday, July 28, 2016, in the Ben Strong Room, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York, 10045, beginning at 9:30 a.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.financialresearch.gov* and limited seating will also be available.

DATES: The meeting will be held on Thursday, July 28, 2016, beginning at 9:30 a.m. Eastern Time.

ADDRESSES: The meeting will be held in the Ben Strong Room, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York, 10045 The meeting will be open to the public via live webcast at *http://www.financialresearch.gov.* A limited number of seats will be available for those interested in attending the meeting in person, and those seats would be on a first-come, first-served basis. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting MUST contact the OFR by email at *OFR_FRAC@ofr.treasury.gov* by 5 p.m. Eastern Time on Wednesday, July 20, 2016, to inform the OFR of their desire to attend the meeting and to receive further instructions about building clearance.

FOR FURTHER INFORMATION CONTACT: Susan Stiehm, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (212) 376–9808 (this is not a toll-free number), *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Susan Stiehm, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The OFR will post statements on the Committee's Web site, *http://www.financialresearch.gov,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of Financial Stability Oversight Council.

This is the eighth meeting of the Financial Research Advisory Committee. Topics to be discussed among all members will include the OFR's Money Market Fund Monitor, OFR research agendas and data projects. For more information on the OFR and the Committee, please visit the OFR Web site at *http://www.financialresearch.gov.*

Dated: July 1, 2016.

Barbara Shycoff,

Chief of External Affairs.

[FR Doc. 2016–16343 Filed 7–8–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Department of the Treasury, Internal Revenue Service Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records

AGENCY: Treasury, Internal Revenue Service (IRS).

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a the Department of the Treasury ("Treasury" or the "Department") proposes to establish a new Treasury system of records titled, "Department of the Treasury, Internal Revenue Service Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records."

DATES: Submit comments on or before August 10, 2016. This new system will be effective August 10, 2016.

ADDRESSES: Comments should be sent to Office of Governmental Liaison, Disclosure and Safeguards, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: New Privacy Act Systems of Records. Comments will be available for inspection and copying at the above address by appointment only. Write to the above address or call (202) 317–4505 (not a toll free number) to schedule an appointment for inspection and/or copying. All comments received, including attachments and other supporting disclosure will be posted without change at *www.regulations.gov.* You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Nicole L. Young, Supervisory Financial Administrator and Program Specialist, SBSE, (240) 613–6407 (not a toll-free number). For privacy issues please contact: David Silverman, Management and Program Analyst, Privacy, Governmental Liaison and Disclosure, at 1111 Constitution Ave NW., Washington, DC 20224, (202) 317–6452 (not a toll free number).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury (Treasury) Internal Revenue Service (IRS) proposes to establish a new Treasury system of records titled, "Department of the Treasury, Internal Revenue Service Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records."

The proposed system will allow the IRS to implement requirements pursuant to Title II (Section 206) of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), Public Law 113–295, to administer a program to certify professional employer organizations by conducting suitability checks of key individuals involved to protect the public. The ABLE Act provides certain tax benefits for certified professional employer organizations giving them statutory authority to collect and remit federal employment taxes under the certified professional employer organization's (CPEO's) employer identification number for wages the CPEO pays to individuals covered by a service contract. Individuals will have the opportunity to seek administrative review of issues related to the denial or revocation of certification.

Professional employer organizations, including their owner(s), responsible individual(s), and authorized representative(s), will be subject to suitability checks, which may include background, fingerprint, and tax compliance checks. These organizations must also secure a bond and provide independent financial reviews on a periodic basis. Additionally, any changes that materially affect the information previously provided in the certification process must be provided to the IRS in a timely manner.

This proposed system will contain information about individuals pertaining to the administration of certifying professional employer organizations and ensuring their compliance with 26 U.S.C. 3511 and 7705. The IRS will collect information about responsible individuals, including background and tax compliance checks to protect the public and ensure the integrity of the certification process. Disclosure of information contained in these systems of records to unauthorized persons could result in a violation of privacy, have adverse financial consequences to individuals, and may bring personal and/or familial embarrassment to an individual.

The IRS has established physical, system, and procedural safeguards to minimize the risk of unauthorized access. Only persons authorized by law will have access to these records. Physical safeguards will be provided in accordance with TD P 71–10, Department of the Treasury Security Manual, and access controls are not less than those published in IRM 10.2, Physical Security Program. Access will be permitted on a need to know basis and based on the routine uses in the system. The IRS will distribute security and privacy guidelines and training to its personnel and conduct random checks on the adequacy of security and privacy features.

Below is the description of the Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records.

In accordance with 5 U.S.C. 552a(r), Treasury has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records: IRS 10.008

SYSTEM NAME:

Department of the Treasury, Treasury/IRS 10.008, Certified Professional Employer Organizations System of Records.

SYSTEM LOCATION:

Records are maintained at the IRS Office of the Commissioner, Small Business/Self Employed Division (SB/SE), National Office, Area Offices, Local Offices, Service Campuses, and Computing Centers. (See IRS Appendix A in the **Federal Register** Volume 80, Number 173, Tuesday, September 8, 2015 for addresses of IRS offices at pages 54063–54143.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information about: (1) Responsible individuals and other individuals who are connected or related to an organization that applies for professional employer organization certification and records of approval, denial, suspension, or revocation of certification; (2) individual contractors involved with the Certified Professional Employer Organizations (CPEO) program; (3) individuals who communicate with the IRS regarding the certified professional employer organization program or about any specific professional employer organization, or about any responsible individual or other individual connected or related to any applicant organization (pursuant to definitions in 301.7705–1T); and (4) third party witnesses who may be interviewed as part of the suitability check.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information about responsible individuals and other individuals connected or related to organizations that apply for Professional Employer Organization (PEO) certification, including information related to approval, denial, suspension, or revocation of certification, records relating to applications for certification or annual verification; records pertaining to IRS investigation and evaluation of eligibility for certification; records related to suitability checks, including but not limited to, background, fingerprint, and tax compliance checks (which may include credit reports, reports of misconduct, law enforcement records and other information from investigations into suitability for certification); and records pertaining to received communications. Records will contain individuals' names, Social Security numbers, employer identification numbers, addresses, phone numbers, alternate names, points of contact, experience, and personal attestations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 3511 and 7705; 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system is to administer records pertaining to the certification of professional employer organizations pursuant to Title II (Section 206) of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), Public Law 113–295. This system of records includes administrative, investigative, and tax records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of return and return information may be made only as provided by 26 U.S.C. 6103. All other records may be disclosed as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted:

(1) To the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) In a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS or DOJ determines that the information is relevant and necessary to the proceeding. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) To an appropriate federal, state, local, tribal, or foreign agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of, a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(4) to third parties during the course of an investigation, which may include a suitability check, to the extent necessary to obtain information pertinent to the investigation.

(5) To the news media as described in the IRS Policy Statement 11–94 (formerly P–1–183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(6) To a contractor, including an expert witness or a consultant, hired by the IRS, to the extent necessary for the performance of a contract.

(7) To the public the names and addresses of responsible individuals and other individuals connected or related to organizations that have been certified, suspended, or revoked. The Service may also disclose the effective date of certification or revocation, the type of discipline, and the effective date and duration of suspension.

(8) To appropriate agencies, entities, and persons when: (a) The IRS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the IRS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the IRS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IRS efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in a secure electronic system or on paper in secure facilities in a locked drawer behind a locked door.

RETRIEVABILITY:

Records may be retrieved by individual or organization name, Taxpayer Identification Number (Social Security Number, Employer Identification Number, or other number assigned by the IRS), application number (number assigned upon submission of an application), or certification approval number. Records pertaining to contractors may be retrieved by contractor name or Taxpayer Identification Number, or by contract number. Records pertaining to communications with individuals regarding the certified professional employer organization program or a specific organization may be retrieved by the name of the individual, the name of a professional employer organization, or name of a responsible individual or other individual connected or related to that organization, or other identifying information of a professional employer organization identified in the communication, such as Taxpayer Identification Number and certification number. Records may also be retrieved by IRS employee assigned to the case, project, or determination.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances.

RETENTION AND DISPOSAL:

Records are generally maintained for six years in accordance with IRM 1.15, Records and Information Management, Document 12829, General Records Schedules, and Document 12990, Records Control Schedules. There may be exceptions if records need to be retained longer at the request of a court if the records are pertinent to litigation or at the request of Congress for congressional oversight.

SYSTEM MANAGER AND ADDRESS:

Commissioner, SB/SE., 1111 Constitution Avenue NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record Access Procedures" below.

Individuals must first verify their identity by providing their full name, current address and date and place of birth. Individuals must sign their request, and their signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition individuals should provide the following:

- An explanation of why he or she believes the IRS would have information about them;
- Specify when he or she believes the records would have been created;
- Provide any other information that will help the IRS or FOIA staff determine which IRS office may have responsive records; and
- If the request is seeking records pertaining to another living individual, he or she must include a statement from that individual certifying his/her agreement for the requestor to access his/her records.

Without this bulleted information, the IRS may not be able to conduct an effective search, and the request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to Internal Revenue Service Centralized Processing Unit—Stop 93A, Post Office Box 621506, Atlanta, GA 30362.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. See "Record Access Procedures" above for records that are not tax records.

RECORD SOURCE CATEGORIES:

Records are obtained from tax records of applicant organizations, responsible individuals, and other individuals connected or related to the applicant organization; public information sources; third parties including individuals, city and state governments, other federal agencies, applicant organization clients, licensing and other professional organizations. Employee information is obtained from IRS personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 16, 2016.

Helen Goff Foster,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2016–16128 Filed 7–8–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2016, and ending on September 30, 2016, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 0.27 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia, 26106–1328. You can download this notice at the following Internet addresses: *http://www.treasury.gov* or *http://www.federalregister.gov.*

DATES: Effective July 1, 2016 to September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be "at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum." 8 U.S.C. 1363(a). Related Federal regulations state that "Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero." 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect Web site.

Gary Grippo,

Deputy Assistant Secretary for Public Finance.

[FR Doc. 2016–16342 Filed 7–8–16; 8:45 am]

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Part II

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged—
Academic Assessments; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB32

[Docket ID ED–2016–OESE–0053]

Title I—Improving the Academic Achievement of the Disadvantaged—Academic Assessments

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing programs administered under title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The proposed regulations would implement recent changes to the assessment requirements of title I of the ESEA made by the Every Student Succeeds Act (ESSA). Unless otherwise specified, references to the ESEA mean the ESEA, as amended by the ESSA.

DATES: We must receive your comments on or before September 9, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use *Regulations.gov.*"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jessica McKinney, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W107, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica McKinney, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W107, Washington, DC 20202. Telephone: (202) 401–1960 or by email: *jessica.mckinney@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. The ESSA builds on the ESEA's legacy as a civil rights law and seeks to ensure every child, regardless of race, socioeconomic status, disability, English proficiency, background, or residence, has an equal opportunity to obtain a high-quality education. Though the reauthorization made significant changes to the ESEA for the first time since the ESEA was reauthorized through the No Child Left Behind Act of 2001 (NCLB), including significant changes to title I, it made limited changes to the assessment provisions of part A of title I. In particular, the ESSA added new exceptions to allow a State to approve its local educational agencies (LEAs) to administer a locally selected, nationally recognized high school academic assessment and, in line with President Obama's Testing Action Plan to reduce the burden of unnecessary testing, to allow a State to avoid double-testing eighth graders taking advanced mathematics coursework. The ESSA also imposed a cap to limit to 1.0 percent of the total student population the number of students with the most significant cognitive disabilities to whom the State may administer an alternate assessment aligned with alternate academic achievement standards in each assessed subject area. The ESSA included special considerations for computer-adaptive assessments. Finally, the ESSA amended the provisions of the ESEA related to assessing English learners in their native language.

We propose to amend §§ 200.2–200.6 and §§ 200.8–200.9 of title 34 of the Code of Federal Regulations (CFR) in order to implement these statutory changes, as well as other key statutory provisions, including those related to the assessment of English learners. We are proposing these regulations to provide clarity and support to State educational agencies (SEAs), LEAs, and schools as they implement the ESEA requirements regarding statewide assessment systems, and to ensure that key requirements in title I of the ESEA are implemented in a manner consistent with the purposes of the law—to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. Consistent with section 1601(b) of the ESEA, the proposed regulations were subject to a negotiated rulemaking process.

Summary of the Major Provisions of This Regulatory Action: As discussed in greater depth in the Significant Proposed Regulations section of this document, the proposed regulations would:

- Update requirements for statewide assessment systems under section 1111(b)(2) of the ESEA, including requirements regarding the validity, reliability, and accessibility of assessments required under title I, part A and provisions regarding computer-adaptive assessments.
- Establish requirements for a State to review and approve assessments if the State permits LEAs to administer a locally selected, nationally recognized high school academic assessment in each of reading/language arts, mathematics, or science consistent with section 1111(b)(2)(H) of the ESEA.
- Establish requirements under section 1111(b)(2)(C) of the ESEA for a State that administers an end-of-course mathematics assessment to exempt an eighth-grade student from the mathematics assessment typically administered in eighth grade if the student instead takes the end-of-course mathematics assessment the State administers to high school students.
- Establish requirements for alternate assessments aligned with alternate academic achievement standards under section 1111(b)(2)(D) of the ESEA for students with the most significant cognitive disabilities, including the requirement to cap the number of students who take such assessments at 1.0 percent of all students assessed in each subject area in the State and the requirements a State would need to meet if it requests a waiver from the Secretary to exceed such cap.
- Establish requirements for native language assessments under section 1111(b)(2)(F) of the ESEA, including requirements for a State to determine when languages other than English are present to a significant extent and to make every effort to provide assessments in such languages and update other requirements related to English learners.

- Establish requirements for computer-adaptive assessments consistent with 1111(b)(2)(J) of the ESEA, including by clarifying the requirement that a State that uses such assessments must report on student academic achievement in the same way it would for any other annual statewide assessment used to meet the requirements of title I, part A of the ESEA.

Please refer to the *Significant Proposed Regulations* section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

Costs and Benefits: The Department believes that the benefits of this regulatory action would outweigh any associated costs to States and LEAs, which would be financed with Federal education funds. These benefits would include the administration of assessments that produce valid and reliable information on the achievement of all students, including English learners and students with disabilities. States can then use this information to effectively measure school performance and identify underperforming schools; LEAs and schools can use it to inform and improve classroom instruction and student supports; and parents and other stakeholders can use it to hold schools accountable for progress, ultimately leading to improved academic outcomes and the closing of achievement gaps, consistent with the purpose of title I of the ESEA. In addition, the regulations provide clarity for how States can avoid double testing and reduce time spent on potentially redundant testing. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits. Consistent with Executive Order 12866, the Secretary has determined that this action is significant and, thus, is subject to review by the Office of Management and Budget under the Executive order.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov.* You may also inspect the comments in person in 3W107, 400 Maryland Ave. SW., Washington, DC, between 9:00 a.m. and 4:30 p.m. Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

Public Participation

On December 22, 2015, the Department published a request for information in the **Federal Register** soliciting advice and recommendations from the public on the implementation of title I of the ESEA. We received 369 comments. We also held two public meetings with stakeholders—one on January 11, 2016, in Washington, DC and one on January 19, 2016, in Los Angeles, California—at which we heard from over 100 speakers regarding the development of regulations, guidance, and technical assistance related to the implementation of title I. In addition, Department staff have held more than 100 meetings with education stakeholders and leaders across the country to hear about areas of interest and concern regarding implementation of the new law.

Negotiated Rulemaking

Section 1601(b) of the ESEA requires the Secretary, before publishing proposed regulations for programs authorized by title I of the ESEA, to obtain advice and recommendations from stakeholders involved in the implementation of title I programs. ESEA further requires that if, after obtaining advice and recommendations from individuals and representatives of groups involved in, or affected by, the proposed regulations, the Secretary wants to propose regulations related to standards and assessments under section 1111(b)(1)–(2) of the ESEA, as well as the requirement under section 1118(b) that funds under part A be used to supplement, and not supplant, State and local funds, the Department must go through the negotiated rulemaking process.

If the negotiated rulemaking committee reaches consensus on the proposed regulations that go through the negotiated rulemaking process, then the proposed regulations that the Department publishes must conform to such consensus agreements unless the Secretary reopens the process. Further information on the negotiated rulemaking process may be found at: *http://www2.ed.gov/policy/elsec/leg/essa/index.html.*

On February 4, 2016, the Department published a notice in the **Federal Register** (81 FR 5969) announcing its intent to establish a negotiated rulemaking committee to develop proposed regulations to implement the changes made to the ESEA by the ESSA. Specifically, we announced our intent to establish a negotiating committee to:

(1) Prepare proposed regulations that would update existing assessment regulations to reflect changes to section 1111(b) of the ESEA, including:

(i) Locally selected, nationally recognized high school academic assessments, under section 1111(b)(2)(H);

(ii) The exception for advanced mathematics assessments in eighth grade, under section 1111(b)(2)(C);

(iii) Inclusion of students with disabilities in academic assessments, including alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities, subject to a cap of 1.0 percent of all students in a State assessed in a subject;

(iv) Inclusion of English learners in academic assessments and English language proficiency assessments; and

(v) Computer-adaptive assessments.

(2) Prepare proposed regulations related to the requirement under section 1118(b) of the ESEA that title I, part A funds be used to supplement, and not supplant, State and local funds, specifically:

(i) Regarding the methodology an LEA uses to allocate State and local funds to each title I school to ensure compliance with the supplement not supplant requirement; and

(ii) The timeline for compliance.

The negotiating committee met in three sessions to develop proposed regulations: Session 1, March 21–23, 2016; session 2, April 6–8, 2016; and session 3, April 18–19, 2016. This notice of proposed rulemaking (NPRM) proposes regulations on assessments that were agreed upon by the negotiating committee.

The negotiating committee included the following members:

Tony Evers and Marcus Cheeks, representing State administrators and State boards of education.

Alvin Wilbanks, Derrick Chau, and Thomas Ahart (alternate), representing local administrators and local boards of education.

Aaron Payment and Leslie Harper (alternate), representing tribal leadership.

Lisa Mack and Rita Pin-Ahrens, representing parents and students, including historically underserved students.

Audrey Jackson, Ryan Ruelas, and Mary Cathryn Ricker (alternate), representing teachers.

Lara Evangelista and Aqueelha James, representing principals.

Eric Parker and Richard Pohlman (alternate), representing other school leaders, including charter school leaders.

Lynn Goss and Regina Goings (alternate), representing paraprofessionals.

Delia Pompa, Ron Hager, Liz King (alternate), and Janel George (alternate), representing the civil rights community, including representatives of students with disabilities, English learners, and other historically underserved students.

Kerri Briggs, representing the business community.

Patrick Rooney and Ary Amerikaner (alternate), representing the U.S. Department of Education.

The negotiating committee's protocols provided that it would operate by consensus, which meant unanimous agreement—that is, with no dissent by any voting member. Under the protocols, if the negotiating committee reached final consensus on regulatory language for either assessments under section 1111(b)(2) of the ESEA, or the requirement under section 1118(b) that funds under title I, part A be used to supplement, and not supplant, or both, the Department would use the consensus language in the proposed regulations.

The negotiating committee reached consensus on all of the proposed regulations related to assessments under section 1111(b)(2) of the ESEA.

Significant Proposed Regulations

The Secretary proposes new regulations in 34 CFR part 200 to implement programs under title I, part A of the ESEA. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect, including the changes to §§ 200.4, 200.8, and 200.9, where only technical edits are proposed to ensure regulations conform to the ESEA, as amended by the ESSA.

Section 200.2 State Responsibilities for Assessment

Statute: Under section 1111(b)(2) of the ESEA, each State must implement a set of high-quality, yearly student academic assessments in, at a minimum, reading/language arts, mathematics, and science. Those assessments must meet a number of requirements. In particular, they must—

- Be the same academic assessments used to measure the academic achievement of all public elementary and secondary school students in the State;
- Be aligned with the challenging State academic standards and provide coherent and timely information about student attainment of those standards at a student's grade level;
- Be used for purposes for which the assessments are valid and reliable;
- Be consistent with relevant, nationally recognized professional and technical testing standards;
- Objectively measure academic achievement, knowledge, and skills without evaluating personal or family beliefs and attitudes;
- Be of adequate technical quality for each purpose required under the ESEA;
- Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include measures of student academic growth and may be partially delivered in the form of portfolios, projects, or extended performance tasks;
- Be administered to and include all public elementary and secondary school students in the State, including English learners and students with disabilities;
- At a State's discretion, be administered through a single summative assessment or through multiple statewide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement and, at the State's discretion, growth;
- Produce individual student interpretive, descriptive, and diagnostic reports regarding achievement on the assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students;
- In keeping with the requirements for State report cards in section 1111(h), enable results to be disaggregated within each State, LEA, and school by each major racial and ethnic group; economically disadvantaged students compared to students who are not economically disadvantaged; children with disabilities compared to children without disabilities; English proficiency status; gender; migrant status; homeless children and youth; status as a child in foster care; and status as a student with a parent who is a member of the Armed Forces on active duty;
- Enable itemized score analyses to be produced and reported to LEAs and schools;
- Be developed, to the extent practicable, using the principles of universal design for learning; and
- At a State's discretion, be developed and administered as computer-adaptive assessments.

Current Regulations: Current § 200.2 governing State assessment systems reflects provisions of section 1111(b)(3) of the ESEA as in effect prior to the ESSA (that is, under the NCLB). In large part, those provisions remain the same in section 1111(b)(2)(B) of the ESEA, as amended by the ESSA. Accordingly, proposed § 200.2 would retain the current regulations except where amendments are needed to reflect statutory changes made by the ESSA.

Proposed Regulations: The proposed regulations would update the current regulations to incorporate new statutory provisions and clarify the basic responsibilities a State has in developing and administering academic assessments. Where updates are not needed, previously existing regulatory text would remain, such as in § 200.2(a), which identifies the required subject areas in which a State must administer yearly student academic assessments.

The proposed regulations in § 200.2(b)(1)(i) would clarify exceptions to the statutory requirement that assessments be the same assessments used for all students to account for new statutory provisions on: (1) Locally selected, nationally recognized high school academic assessments; (2) an exception for eighth-grade students taking advanced mathematics courses; (3) alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities; and (4) States that receive demonstration authority for an innovative assessment system under section 1204 of the ESEA.

Proposed § 200.2(b)(2)(ii) would also incorporate a new statutory requirement that assessments be developed, to the extent practicable, using the principles of "universal design for learning," including the definition of this term consistent with the statutory instruction to use the definition provided in the Higher Education Act of 1965, as amended. Further, the proposed regulations in § 200.2(b)(3) would incorporate key relevant portions of current § 200.3, such as the requirement that assessments measure the depth and breadth of the challenging State academic content standards.

Proposed § 200.2(b)(3)(ii)(B)(*1*) would also include a new statutory clarification that general assessments must be aligned with challenging State academic standards that are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant career and technical education standards. Consistent with the statute, proposed § 200.2(b)(3)(ii)(B)(*2*) would require alternate assessments aligned with alternate academic achievement standards to be developed in a way that reflects professional judgment as to the highest possible standards achievable by students with the most significant cognitive disabilities to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive, integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act.

The proposed regulations in § 200.2(b)(4)(i) would require fairness, in addition to validity and reliability, as a key technical expectation. Additionally, consistent with the updated statute, proposed § 200.2(b)(5)(ii) would require that a State make technical information available to the public, including on the State's Web site.

The proposed regulations in §§ 200.2(b)(7), (10) would specify that a State may, at its discretion, measure student growth; use portfolios, projects, or extended performance tasks as part of its assessment system; administer multiple interim or modular assessments through the course of the school year; or offer a single summative assessment statewide.

As under current regulations, the proposed regulations in § 200.2(b)(11) would require that an assessment system be able to disaggregate information by all subgroups of students that are required to be reported under other provisions of the ESEA. In addition to the subgroups required under the ESEA, as amended by NCLB, the proposed regulations in § 200.2(b)(11)(vii)–(ix) would require that a State's assessment system be able to disaggregate achievement data for subgroups that the ESEA, as amended by the ESSA, requires a State to include on its annual State report card under section 1111(h) of the ESEA: Homeless children and youth as defined by the McKinney-Vento Homeless Assistance Act; status as a child in foster care as defined in regulations of the U.S. Department of Health and Human Services (HHS); and status as a student with a parent who is a member of the Armed Forces on active duty. Further, the proposed regulations would require State assessment systems to be able to disaggregate information for students with a parent serving in the National Guard, even though such information is not required to be reported under section 1111(h).

Proposed § 200.2(c) addresses new statutory language regarding computer-adaptive assessments. Specifically, proposed § 200.2(c)(1) would clarify that, although such assessments may include items above or below a student's grade level, the assessment must result in a proficiency determination for the grade in which the student is enrolled.

The proposed regulations would further specify in § 200.2(d) which assessments are subject to assessment peer review under section 1111(a)(4) of the ESEA. Finally, proposed § 200.2(e) would require that information provided to parents under section 1111(b)(2) of the ESEA be conveyed in a manner parents can understand, including by providing written translations for parents who are not proficient in English wherever possible; by providing oral translations if written translations are not available; and by providing such information in a format accessible to a parent who is an individual with a disability, consistent with title II of the Americans with Disabilities Act (ADA).

Reasons: Except as explained below, the proposed regulations in § 200.2 are included to align the regulations with the updated statute and with other applicable laws and regulations.

Section 1111(b)(1)(E)(i)(V) of the ESEA requires that alternate academic achievement standards for students with the most significant cognitive disabilities be aligned to ensure that a student who meets those standards is on track to pursue postsecondary education or employment, consistent with the specific purposes of Public Law 93–112, as in effect on July 22, 2014. Public Law 93–112, as in effect on July 22, 2014, is the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, which, at the request of the negotiators, proposed § 200.2(b)(3)(2)(B)(*2*) would reference directly for clarity. To make the reference to the Rehabilitation Act more relevant to educational assessment, the proposed regulations would clarify that alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities must be aligned to ensure that a student who meets those standards is on track to pursue postsecondary education or competitive, integrated employment. The negotiating committee discussed the importance of including competitive, integrated employment rather than any type of employment to prevent former practices including the tracking of students with the most significant cognitive disabilities into sheltered workshop employment settings that provide less than minimum wage, and to emphasize that standards for such students must aim for either postsecondary education or competitive, integrated employment alongside individuals without disabilities.

In 2014, the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education released a revised and updated version of their professional and technical standards for educational and psychological testing. The updated professional and technical standards emphasize fairness, in addition to validity and reliability. To reflect these standards, and in response to extensive discussion by the negotiating committee in support of explicit references to fairness for all students, we propose to add fairness as a key element in § 200.2(b)(4)(i).

The ESEA also delineates the State option to measure student growth in section 1111(b)(2)(B)(vi). While the statute and regulations continue to require reporting about student achievement relevant to State expectations for the grade in which a student is enrolled, the proposed regulations include updates in § 200.2(b)(7)(i) because a State may also provide additional information to better articulate student knowledge and skill at all achievement levels. The negotiators agreed that the statute requires a State to report on grade-level proficiency regardless of whether a State chooses to include student growth measures and regardless of whether the assessment is paper-based or computer-administered.

The requirement to ensure that a State's assessment system can disaggregate data on homeless children or youths, children in foster care, and children with parents in the Armed Forces on active duty would be added to § 200.2(b)(11)(vii)–(ix) because section 1111(h)(1)(C)(ii) requires that a State report achievement results separately on such students on its State report card. In addition, the proposed regulations would include children with a parent who serves on full-time National Guard duty. The negotiators supported including disaggregation of data for children with a parent who serves on full-time National Guard duty because they believed the education of those children could be disrupted by their parent's service to the same extent as children with a parent on active duty in the Armed Forces. Under this proposed requirement, the assessment system would be required to be able to disaggregate data on these children, but it would not create a new Federal reporting requirement; a State, however, at its discretion, would have the ability to report the achievement of these children separately. The proposed regulations would also incorporate existing statutory or regulatory definitions of subgroups of students on which a State is required to disaggregate achievement data, including by incorporating the definition of "foster care" from an HHS Social Security Act regulation for consistency with the agency charged with administering foster care provisions.

Section 1111(b)(2)(J) of the ESEA gives a State discretion to use computer-adaptive tests as part of its statewide assessment system. While computer-adaptive tests offer potential advantages for targeting student achievement levels using fewer assessment items and may thus reduce time spent on testing, proposed § 200.2(c) would clarify that, no matter what, such tests must produce results regarding student achievement for the grade in which the student is enrolled. This is essential to ensure that all students, even students for whom a computer-adaptive assessment provides important information about achievement below grade level, receive high-quality instruction at the grade in which they are enrolled and are held to the same grade-level standards. The negotiators discussed this issue as it relates to measuring student growth and agreed that the opportunity to use assessment items above or below a student's grade level to increase the precision of growth measurements must not interfere with obtaining accurate information about student performance compared to grade-level expectations that students, parents, educators, policymakers, stakeholders, and the public need in order to make decisions to better support students.

Proposed § 200.2(d) would identify the assessments that are subject to assessment peer review under section 1111(a)(4) of the ESEA, consistent with the recommendation of committee members for greater clarity on this issue. Specifically, the following assessments or documentation are subject to assessment peer review: A State's general assessments in each required grade level in reading/language arts, mathematics, and science; any locally selected, nationally recognized high school academic assessment a State wishes to approve for an LEA to use consistent with § 200.3; a State's technical review of local assessments if an SEA demonstrates that no State official, agency, or entity has the authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments, consistent with § 200.4; any assessment administered in high school to the students for whom the exemption from the eighth-grade grade mathematics assessment under § 200.5(b) applies (that is, the more advanced mathematics assessment such a student takes in high school since in eighth grade the student took the assessment typically administered to high school students in the State); alternate assessments aligned to alternate academic achievement standards consistent with § 200.6(c); assessments administered in a student's native language consistent with § 200.6(f)(1); English language proficiency assessments consistent with § 200.6(f)(3); and assessments in a Native American language consistent with § 200.6(g). A State's academic assessment system has long been subject to peer review, since it is a part of the State's title I plan, and section 1111(a)(4) requires peer review of title I State plans. Proposed § 200.2(d) would maintain the existing requirements while, as agreed to by negotiators, improving clarity regarding which assessments would be subject to peer review. In addition, now that English language proficiency is required to be used for school accountability purposes under section 1111(c) of the ESEA, the negotiating committee agreed that it was important to include English language proficiency assessments in peer review to ensure high technical quality of all assessments used for accountability purposes.

Proposed § 200.2(e) would articulate the manner in which parents must receive information under section 1111(b)(2) of the ESEA, to ensure that all parents, including parents who are English learners or individuals with disabilities, would be able to access and understand the information provided to them about their children's performance on required assessments. Proposed § 200.2(e)(1) would repeat relevant statutory language. Proposed § 200.2(e)(2) would restate the longstanding Department interpretation about how the ESEA statutory language "to the extent practicable" applies to written and oral translations, an approach consistent with the Department's interpretation of Title VI of the Civil Rights Act of 1964. Proposed § 200.2(e)(3) would also reiterate existing obligations to parents with disabilities under the ADA. Some negotiators initially proposed including "guardians" whenever the proposed regulation refers to "parents"; however, the negotiating committee ultimately agreed that was unnecessary as the ESEA defines "parent" in section 8101(38) to include "a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare)." Parents and guardians with disabilities or limited English proficiency have the right to request notification in accessible formats. We also encourage States and LEAs to proactively make all information and notices they provide to parents and families accessible, helping to ensure that parents are not routinely requesting States to make this information available in alternative formats. For example, one way to ensure accessibility would be to provide orally interpreted and translated notifications and to follow the requirements of Section 508 of the Rehabilitation Act.

Section 200.3 Locally Selected, Nationally Recognized High School Academic Assessments

Statute: Under section 1111(b)(2)(H) of the ESEA, a State may permit an LEA to administer a locally selected, nationally recognized high school academic assessment in lieu of the high school academic assessment the State typically administers in reading/language arts, mathematics, or science. If a State chooses to offer this option, it must establish technical criteria to determine if the locally selected, nationally recognized high school academic assessment an LEA wishes to use meets specific requirements. More specifically, the assessment must:

- Be aligned with the State's academic content standards, address the depth and breadth of those standards, and be equivalent in its content coverage, difficulty, and quality to the statewide assessment;

- Provide comparable, valid, and reliable data on academic achievement compared to the respective statewide assessment for all students and each subgroup of students, expressed in terms consistent with the State's academic achievement standards among all LEAs in the State;
- Meet the requirements in section 1111(b)(2)(B) of the ESEA regarding statewide assessments, except the requirements in section 1111(b)(2)(B)(i) that statewide assessments be the same academic assessments used to measure the achievement of all students and be administered to all students in the State; and
- Provide unbiased, rational, and consistent differentiation between schools within the State for accountability purposes.

A State must review an LEA's locally selected, nationally recognized high school academic assessment to determine if it meets or exceeds the criteria the State has established, submit evidence supporting this determination to the Department for peer review under section 1111(a)(4) of the ESEA, and, following successful completion of peer review, approve the assessment. An LEA that wishes to select a nationally recognized high school academic assessment must notify the parents of high school students in the LEA of its request for approval to use such assessment and, upon approval and in each subsequent year, notify them that the LEA will be using a different assessment from the statewide assessment.

Current Regulations: None.

Proposed Regulations: Proposed § 200.3 would clarify the locally selected, nationally recognized high school academic assessment option under section 1111(b)(2)(H) of the ESEA in several respects. First, proposed § 200.3(a)(1) would make clear that a State has discretion over whether to permit its LEAs to select and administer a nationally recognized high school academic assessment in lieu of the statewide assessment. Second, under proposed § 200.3(a)(2), an LEA would be required to administer the same locally selected, nationally recognized academic assessment to all high school students in the LEA, except for students with the most significant cognitive disabilities who are assessed on an alternate assessment aligned with alternate academic achievement standards. Third, proposed § 200.3(b)(2)(i) would require a State to ensure that the use of appropriate accommodations, as determined by the appropriate school-based team for a given student consistent with State policy, does not deny a student with a disability or an English learner the opportunity to participate in the assessment, or any of the benefits from participation in the assessment that are afforded to students without disabilities or students who are not English learners. Fourth, proposed § 200.3(c)(2)(i) would require an LEA that is approved to implement a nationally recognized high school academic assessment to update its local plan under section 1112 or section 8305 of the ESEA, including by describing how the request was developed consistent with all requirements for consultation under section 1112 and tribal consultation under section 8538 of the ESEA. Fifth, to ensure smooth implementation with respect to charter schools, proposed § 200.3(c)(1)(ii) would require an LEA that includes any public charter schools and wishes to implement a nationally recognized high school academic assessment to provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessment. If a public charter school is an LEA under State law, proposed § 200.3(c)(2)(ii) would require that public charter school to provide an assurance that the use of the assessment is consistent with State charter school law and that the LEA consulted with its authorized public chartering agency. Finally, proposed § 200.3(d) would define ''nationally recognized high school academic assessment'' to mean an assessment of high school students' knowledge and skills that is administered in multiple States and is recognized by institutions of higher education in those or other States for the purposes of entrance or placement into credit-bearing courses in postsecondary education or training programs.

Reasons: The option for an LEA to select, and for a State to approve, the use of a nationally recognized high school academic assessment in place of the statewide academic assessment for purposes of accountability is a new authority provided in the ESEA. Implementing this new authority will require careful coordination across local, State, and Federal agencies and attention to technical requirements, including accessibility and accommodations for students with disabilities and English learners. Accordingly, proposed § 200.3 would specify the requirements and responsibilities related to this new authority.

Such assessments would be used for purposes of the statewide accountability system under section 1111(c) of the ESEA, including the requirements that a State must meet regarding annual meaningful differentiation and identification of low-performing schools for intervention. During negotiations, the negotiating committee agreed that proposed § 200.3(a) would clarify that a State has discretion to decide whether to offer its LEAs the opportunity to request to use a locally selected, nationally recognized high school academic assessment. In addition, in order to maintain meaningful within-district comparisons of student achievement, an LEA would be required to select and use a single nationally recognized academic assessment for all high school students in the LEA, except those students with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards. Several negotiators recommended greater flexibility at the local level regarding the number of nationally recognized high school academic assessments that might be administered, including by proposing that an LEA have authority to offer more than one locally selected, nationally recognized high school academic assessment, or that an LEA have authority to phase in the use of such assessments over time. Ultimately, the negotiators reached consensus on the value of preserving within-district direct comparability of results, particularly for reporting on LEA report cards, for transparency, and for school accountability determinations.

The proposed regulations in § 200.3(b) would incorporate statutory requirements for State approval, including the State-established technical criteria. These State-level quality criteria are essential to maintaining a rational and coherent statewide assessment system that fairly measures student achievement for the purpose of reporting on school performance and identifying those schools in need of the greatest support. In addition, proposed § 200.3(b)(2)(i) would clarify that any test an LEA uses for accountability must offer all State-determined appropriate accommodations, including by ensuring that the tests—and any benefits to students from taking such tests, such as valid college-reportable scores—are available to all students, including students with disabilities and English learners. Committee members agreed on the importance of spelling out State responsibilities, particularly the requirement that a student who receives appropriate accommodations, as determined by the student's IEP team, consistent with State accommodation guidelines for accommodations that do not invalidate test scores, receive all benefits that taking such tests for the purpose of meeting the title I assessment requirements offer other students.

Proposed § 200.3(b)(2)(ii) would clarify the requirement that a State submit, for peer review and approval by the Department, any locally selected, nationally recognized high school academic assessment an LEA wishes to administer. As the proposed regulations would simply incorporate and restate the statutory process for ensuring a locally selected, nationally recognized assessment is approved through peer review, the negotiating committee approved it without extensive debate.

The proposed regulations in § 200.3(c) would offer additional detail regarding the process by which an LEA would apply to a State to use a locally selected, nationally recognized high school academic assessment. Proposed § 200.3(c)(1)(i) would specify that an LEA must inform parents and solicit their input prior to requesting approval from the State so that such input may inform the LEA's request and the State's consideration of the LEA application. Proposed § 200.3(c)(1)(ii) would clarify how public charter schools are included in an LEA's consideration of whether to submit such a request, and proposed § 200.3(c)(2)(ii) would explain how a public charter school that is an LEA must consult its authorized public chartering agency. A negotiator proposed these provisions to ensure that the assessments applicable to charter schools, whether those schools are part of an LEA or are an LEA in their own right, are consistent with existing chartering agreements and State charter school law. Additionally, proposed § 200.3(c)(2)(i) would address the need to update an LEA's title I plan to include, among other things, a description of how the request was developed consistent with the consultation requirements under sections 1112 and 8538 of the ESEA when making a request. To effectively implement such a change in assessments, it will be critical to consider, as a community, all of the implications of the use of an assessment other than the statewide academic assessment.

Proposed § 200.3(c)(4)(i) would require an LEA to indicate annually to the State whether it will continue to use a previously approved, locally selected, nationally recognized high school academic assessment. This requirement is needed to ensure that a State is able to administer assessments to all students, including in the event that an LEA elects to again use the statewide academic assessment after administering a locally selected, nationally recognized high school academic assessment.

Proposed § 200.3(d) would define the term "nationally recognized high school academic assessment." The committee discussed this definition extensively, and numerous versions were considered, most of which were aimed at broadening the definition to accommodate a wider range of assessments. Although there are many assessments in use in multiple States, the statute specifies that assessments eligible for selection by an LEA in lieu of the statewide assessment must be "nationally recognized." The negotiators discussed and ultimately agreed that a reasonable indicator of whether an assessment is nationally recognized is whether multiple institutions of higher education or postsecondary training programs consider the results of such assessments for entrance or placement into credit-bearing courses. In addition, we believe that such use of the assessment further indicates that the assessment is high-quality and provides important information about student readiness for postsecondary education and training.

Section 200.5 Assessment Administration

Frequency

Statute: Under section 1111(b)(2)(B)(v) of the ESEA, a State must administer assessments annually as follows: For reading/language arts and mathematics assessments, the State must administer them in each of grades 3 through 8 and at least once in grades 9 through 12; for science assessments, the State must administer them not less than one time in grades 3 through 5, grades 6 through 9, and grades 10 through 12.

Current Regulations: Current § 200.5 describes the frequency with which reading/language arts, mathematics, and science assessments must be administered under the ESEA, as amended by NCLB.

Proposed Regulations: Proposed § 200.5(a) would describe the frequency with which reading/language arts, mathematics, and science assessments must be administered under section 1111(b)(2)(B)(v). It would also make clear that a State must administer its assessments annually in the specified grade spans.

Reasons: Proposed § 200.5(a) would reflect and clarify statutory changes in the frequency for administering State assessments, particularly in high school where reading/language arts and mathematics assessments may now be administered once in grades 9–12, instead of grades 10–12. It also would make clear that the required assessments must be administered annually according to the frequency prescribed in the statute. The negotiating committee briefly discussed these changes and agreed to these updates.

Middle School Mathematics Exception

Statute: Under section 1111(b)(2)(C) of the ESEA, a State may exempt an eighth-grade student from the mathematics assessment the State typically administers in eighth grade if the student instead takes an end-of-course test the State typically administers in high school. The student's performance on the high school assessment must be used in the year in which the student takes the assessment for purposes of measuring academic achievement and calculating participation rate under section 1111(c)(4). In high school, the student must take a mathematics assessment that is an end-of-course assessment or another assessment that is more advanced than the assessment the student took in eighth grade, and the student's results must be used to measure academic achievement and calculate participation rate for his or her high school.

Current Regulations: None.

Proposed Regulations: Proposed § 200.5(b) would clarify the eighth-grade mathematics exception in section 1111(b)(2)(C) in several respects. First, proposed § 200.5(b) would make clear that only a State that administers an end-of-course mathematics assessment to meet the high school assessment requirement may offer the exception to eighth-grade students, consistent with section 1111(b)(2)(C)(i). The exception would not apply in a State that administers a general mathematics assessment in, for example, eleventh grade. Second, proposed § 200.5(b)(3)(i) would permit a student who received the exception in eighth grade to take in high school either a State-administered end-of-course mathematics assessment or a nationally recognized high school academic assessment in mathematics, as defined in proposed § 200.3(d), that is more advanced than the assessment the student took in eighth grade. The more advanced high school assessment would need to be submitted for peer review under section 1111(a)(4) of the ESEA, as required under proposed § 200.2(d). Finally, proposed § 200.5(b)(4) would require the State to describe in its title I State plan, with regard to this exception, its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school.

Reasons: The negotiating committee discussed the eighth-grade mathematics exception at length, acknowledging early in the process that the statute limits this exception to those States that administer high school end-of-course tests. The negotiators supported providing advanced mathematics coursework in middle school and easing the burden of testing by relieving a student who takes a high school-level mathematics course in eighth grade from also having to take the State's general eighth-grade mathematics assessment, but also proposed several safeguards for inclusion in proposed § 200.5(b).

In requiring the more advanced end-of-course high school mathematics assessment either to be State-administered or nationally recognized, as defined in proposed § 200.3, proposed § 200.5(b)(3)(i) would clarify that the assessment may not be one developed by a teacher to measure knowledge of his or her specific course content.

Also, proposed § 200.5(b)(4) would require the State to describe in its title I State plan its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school. This provision is meant to give all students, regardless of the school they attend, a fair and equitable opportunity to access advanced mathematics in middle school. The negotiating committee discussed this provision extensively, with some members objecting to it as unnecessarily burdensome and others supporting even greater efforts to ensure equal access to advanced mathematics in middle school. Ultimately, the negotiators agreed that the proposed language was a reasonable compromise, particularly since it would apply only to the limited number of States that choose to implement the eighth-grade mathematics exception. Such States could address the provision, for example, by providing accelerated preparation in elementary school to take advanced mathematics coursework in eighth grade or through distance learning for students whose middle school does not offer an advanced mathematics course.

Section 200.6 Inclusion of All Students

Students With Disabilities in General

Statute: Under section 1111(b)(2)(B)(i) and (b)(2)(B)(vii)(I)–(II) of the ESEA, a State must include in its assessment system all public elementary and secondary school students, including students with disabilities. The statute clarifies that those students include children with disabilities under the Individuals with Disabilities Education Act (IDEA) and students with a disability who are provided accommodations under other acts. Section 1111(b)(2)(D) authorizes a State to adopt alternate assessments aligned with the State's alternate academic achievement standards for students with the most significant cognitive disabilities. Otherwise, under section 1111(b)(2)(B)(ii), students with disabilities, like students who do not have a disability, must be assessed based on academic achievement standards for the grade in which a student is enrolled. All students with disabilities, including those with the most significant cognitive disabilities, as established under section 1111(b)(1)(E)(i)(I), must be administered an assessment aligned with the State's challenging academic content standards for the grade in which they are enrolled.

Current Regulations: Current § 200.6(a) requires a State to provide for the participation of all students, including students with disabilities, as defined under section 602(3) of the IDEA, and for each student covered by section 504 of the Rehabilitation Act of 1973 (section 504), in a State's academic assessment system.

Proposed Regulations: The proposed regulations would update this section to reflect the new statutory inclusion of "other acts" as it relates to students with disabilities. First, the proposed regulations would require the inclusion of all students, including students with disabilities, in the State assessments. Proposed § 200.6(a)(1) would delineate students who are identified as children with disabilities under section 602(3) of the IDEA; the subset of such students who are students with the most significant cognitive disabilities; and students with disabilities covered under other acts, including section 504 and title II of the ADA. Proposed § 200.6(a)(2)(i) would specify that all students with disabilities, except those students with the most significant cognitive disabilities, must be assessed using the general academic assessment aligned with the challenging State academic standards for the grade in which the student is enrolled. Further, under proposed § 200.6(a)(2)(ii), students with the most significant cognitive disabilities may be assessed using either the general assessment or an alternate assessment aligned with the challenging State academic content standards for the grade in which the student is enrolled and with alternate academic achievement standards, if the State has adopted such alternate academic achievement standards.

Reasons: The proposed regulations would reinforce the State's statutory obligation to include all students in statewide academic assessments used for accountability purposes under the ESEA. The negotiating committee discussed this section at length, rejecting proposals to either define "students with disabilities" to include students in each of the categories listed in proposed § 200.6(a)(1)(i)–(iii) or to refer to students eligible for accommodations. Ultimately, to improve clarity and avoid creating any confusion in the field about student access to accommodations, the negotiators agreed that the proposed regulations in § 200.6(a)(1) would identify groups of students with disabilities—that is, those defined under the IDEA; those who may need alternate assessments aligned with alternate academic achievement standards; and those who may need appropriate accommodations outside of the IDEA. The proposed regulations would also clarify that English learners with disabilities must receive support and appropriate accommodations relative both to their disabilities and to their status as English learners.

Appropriate Accommodations and Definitions Related to Students With Disabilities

Statute: Section 1111(b)(2)(B)(vii) of the ESEA requires that a State's assessment system provide for the participation of all students and requires appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for children with disabilities, as defined in section 602(3) of the IDEA, including children with the most significant cognitive disabilities, and students with a disability who are provided accommodations under other acts.

Current Regulations: Current § 200.6(a)(1) requires a State's academic assessment system to provide appropriate accommodations, as determined by a student's individualized education program (IEP) team or placement team, that are necessary for a student with a disability, as defined under section 602(3) of the IDEA, or for a student covered under section 504, to take the State's assessment. For most students with disabilities under IDEA and students covered under section 504, appropriate accommodations are those necessary to measure the academic achievement of a student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled. For students with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards, appropriate accommodations are those necessary to measure a student's academic achievement based on those alternate academic achievement standards aligned with content standards for the grade in which the student is enrolled.

Proposed Regulations: Proposed § 200.6(b)(1) would require that a State's academic assessment system provide appropriate accommodations for each student with a disability. Proposed § 200.6(b)(1) would include, as an example of such accommodations, interoperability with, and the ability to use, "assistive technology devices," as that term would be defined in proposed § 200.6(e). The proposed regulations would clarify that use of assistive technology devices must be consistent with nationally recognized accessibility standards. Although assistive technology devices are one kind of accommodation, other accommodations are also available and may be appropriate. The determination of which accommodations would be appropriate for a student must be made individually by a student's IEP team, placement team, or other team the LEA designates to make these decisions. Proposed § 200.6(b)(1) would identify the teams responsible for making accommodations determinations for the students with disabilities identified in proposed § 200.6(a). Proposed § 200.6(b)(2)(i) would require a State to disseminate information about the use of appropriate accommodations. Further, proposed § 200.6(b)(2)(ii) would require that a State ensure that educators, including paraprofessionals, specialized instructional support personnel, and other appropriate staff, receive training to administer assessments, and know how to make use of appropriate accommodations for all students with disabilities.

Proposed § 200.6(b)(3) would specify that a State must ensure that a student with a disability who uses appropriate accommodations on the assessments a State or LEA uses to meet the requirements of title I, part A of the ESEA has the same opportunity to participate in, and is not denied any of the benefits of, the assessment as compared with a student who does not have a disability, including such benefits as valid college-reportable scores.

Reasons: The proposed regulations would incorporate statutory changes and provide details with regard to appropriate accommodations for students with disabilities. Because the statute provides the example of interoperability with, and ability to use, assistive technology devices on State assessments, the Department proposed to the committee to incorporate this language in proposed § 200.6(b)(1). The Department also proposed, and negotiators agreed, to include in proposed § 200.6(e) the definition of "assistive technology devices" from 34 CFR 300.5, which would improve clarity and consistency throughout Departmental regulations. Further, to help States, districts, and schools understand how to implement the statutory reference to students with disabilities covered under "other acts" (*i.e.,* other than IDEA), proposed § 200.6(b)(1) would identify the individuals or teams responsible for making accommodations determinations under IDEA, section, and title II of the ADA. The negotiators discussed this section in detail, with a few negotiators stressing the differences between those individuals or teams that diagnose disabilities and individuals or teams that identify accommodations needed for individual students. The negotiating committee agreed that adding specificity around the language "other acts" with regard to the teams responsible for making determinations is important to ensure that State, local, and school leaders know how to implement the statute.

Appropriate accommodations, consistent with IDEA regulations at 34 CFR 300.160(b), are necessary to measure the academic achievement and functional performance of students with disabilities relative to the challenging State academic standards or alternate academic achievement standards. Proposed § 200.6(b)(2) would require a State to disseminate information about the use of appropriate accommodations to provide parents and educators with adequate information for making such determinations. Because educators in many roles administer assessments and accommodations for assessments, proposed § 200.6(b)(2)(ii) would detail the full range of staff who may need training to ensure they know how to administer assessments and make use of appropriate accommodations in order to best support all students. The negotiating committee agreed on the need for training all staff who will administer assessments, with negotiators particularly emphasizing the importance of including a requirement for training for educators in the proposed regulations.

As some assessments that some States use to meet the requirements of title I, part A offer benefits to students beyond complying with Federal and State requirements, such as valid college-reportable scores on examinations commonly used for college entrance or placement, proposed § 200.6(b)(3) would require a State to ensure that a student with a disability who uses appropriate accommodations as determined by the relevant individual or team consistent with State accommodations guidelines has the same opportunity to participate in, and receive benefits from, the assessment as a student who does not have a disability. To this end, if students who do not have disabilities are able to use scores on such assessments for the purposes of college entrance or placement, students with disabilities who use appropriate accommodations as determined by their IEP, placement, or other team, must receive the same benefit, including a score that is not flagged with respect to validity or the use of accommodations. This is critical to guarantee that use of such assessments is in accordance with civil rights protections. The negotiators discussed this issue at length, with members of numerous constituencies strongly concerned that assessments currently in use do not always offer all the same benefits for students who take them with appropriate accommodations, including the specific benefit of college score reporting. These committee members also cited the additional burden sometimes placed on families of such students when they must either pay for a second test without accommodations for the purpose of college applications or provide additional, burdensome justifications to an assessment provider through a system outside the regular IEP process in order to access their regular accommodations designated by the IEP team, or both. The negotiating committee felt strongly that, when such an assessment is used as a statewide or district-wide assessment to meet the requirements of title I, part A, students with disabilities must not encounter barriers that their nondisabled peers do not face. Therefore, proposed § 200.6(b)(3) would require that a student with a disability receive appropriate accommodations, as determined by the relevant team articulated in § 200.6(b)(1)(i), (ii), or (iii), so that the student with a disability can participate in the assessment, and receive the same benefits from the assessment that non-disabled students receive.

Alternate Assessments Aligned With Alternate Academic Achievement Standards for Students With the Most Significant Cognitive Disabilities

Statute: Section 1111(b)(2)(D) of the ESEA authorizes a State that adopts alternate academic achievement standards for students with the most significant cognitive disabilities to administer alternate assessments aligned with the State's academic content standards for the grade in which a student is enrolled and aligned with the State's alternate academic achievement standards. Section 1111(b)(2)(D)(i)(I), however, caps at the State level the number of students with the most significant cognitive disabilities who may be assessed with an alternate assessment aligned with alternate academic achievement standards. For each subject for which assessments are administered, the total number of students in the State as a whole assessed in that subject using an alternate assessment aligned with alternate academic achievement standards may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject. Section 1111(b)(2)(D)(ii)(II) further provides that nothing in section 1111(b)(2)(D) may be construed as authorizing either the Secretary or a State to impose a cap on an individual LEA with respect to the percentage of students with the most significant cognitive disabilities that the LEA assesses with an alternate assessment aligned with alternate academic achievement standards. However, an LEA that exceeds the State's cap must submit information to the State justifying the need to exceed the cap. Under section 1111(b)(2)(D)(ii)(III), the State must provide appropriate oversight of an LEA that exceeds the State's cap. Section 1111(b)(2)(D)(ii)(IV) makes clear that the State cap is subject to the Secretary's waiver authority in section 8401 of the ESEA.

Current Regulations: Current § 200.6(a)(2) governs the use of alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities whom a child's IEP team determines cannot participate in the State assessments, even with appropriate accommodations. Section 200.6(a)(2)(iii) requires a State that permits alternate assessments that yield results based on alternate academic achievement standards to document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum.

Current § 200.6(a)(4) requires a State to report separately to the Secretary the number and percentage of students with disabilities taking general assessments, general assessments with accommodations, alternate assessments based on the grade-level academic achievement standards, and alternate assessments based on the alternate academic achievement standards.

While the current regulations do not limit the number of students who may take an alternate assessment based on alternate academic achievement standards, § 200.13 does cap the number of proficient and advanced scores of students with the most significant cognitive disabilities based on alternate academic achievement standards that may be included in calculating adequate yearly progress (AYP) for LEAs and the State for accountability purposes at 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics. Under § 200.13(c)(4) of the current regulations, a State may not request a waiver from the Secretary for permission to exceed the 1.0 percent cap. However, under § 200.13(c)(5), a State may grant an exception to an LEA, permitting it to exceed the 1.0 percent cap, if the LEA: (1) Demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed, (2) explains why the incidence of such students exceeds 1.0 percent of all students assessed, and (3) documents that it is implementing the State's guidelines under § 200.1(f).

Proposed Regulations: Proposed § 200.6(c) would incorporate new statutory requirements regarding alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities, including the cap of 1.0 percent of students assessed in a subject in a school year at the State level, as well as clarify other statutory provisions.

The proposed regulations in § 200.6(c)(1) would articulate that, at the State's discretion, such assessments may measure student growth against the alternate academic achievement standards if done in a valid and reliable way. While the cap of 1.0 percent of students assessed in a subject in a school year applies only at the State level, an LEA that assesses more than 1.0 percent of students in a subject in a school year would be required to submit a justification to the State so that the State would be able to provide appropriate oversight and support. The State would also be required to make the LEA's justification available to the public so long as doing so does not reveal any personally identifiable student information.

Proposed § 200.6(c)(4) would detail information a State would be expected to submit if it determines it will need to request a waiver of the State-level cap of 1.0 percent of students taking an alternate assessment aligned with alternate academic achievement standards. The proposed regulations would require that such a waiver request be limited to one year and submitted at least 90 days before the start of the State's first testing window. Under the proposed regulations, the State's waiver request would be required to include—

- Certain State-level data, including the number and percentage of students in each subgroup identified in section 1111(c)(2) of the ESEA (except the children with disabilities subgroup) taking such alternate assessments and data demonstrating that the State measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup
- Specific assurances from the State that it has verified certain information with respect to each LEA that the State anticipates will assess more than 1.0 percent of students in any subject and any other LEA that the State determines will significantly contribute to the State's exceeding the State cap of 1.0 percent statewide; and
- A State plan and timeline to improve implementation of its guidelines for IEP teams under proposed § 200.6(d) regarding appropriate use of such alternate assessments, as well as additional steps the State will take to support LEAs and to address any disproportionality in the number and percentage of students taking such alternate assessments as identified in the State-level data.

If a State requests to extend a waiver for an additional year, having already received a previous waiver, the State also would be required to demonstrate substantial progress towards achieving each component of the prior year's plan.

Proposed § 200.6(c)(5) would require a State to report, as it had to previously, the number and percentage of children with disabilities who take general assessments, general assessments with accommodations, and alternate assessments aligned with alternate academic achievement standards.

Proposed § 200.6(c)(7) would address the use of computer-adaptive alternate assessments aligned with alternate academic achievement standards, which must be aligned with the challenging State academic content standards for the grade in which a student is enrolled, as must all alternate assessments aligned with alternate academic achievement standards. Computer-adaptive alternate assessments must also meet all other requirements expected of such alternate assessments that are not computer adaptive.

Reasons: Although the current regulations cap for accountability purposes the number of proficient and advanced scores of students with the most significant cognitive disabilities who are assessed with an alternate assessment aligned with alternate academic achievement standards, the ESEA specifically limits participation in such alternate assessments to 1.0 percent of students assessed in a subject at the State level. Establishing waiver criteria will help ensure that the 1.0 percent statutory cap on participation in alternate assessments aligned with alternate academic achievement standards is upheld with fidelity in order to ensure that only students with the most significant cognitive disabilities are assessed using such assessments.

Accordingly, to clarify expectations regarding waivers of the 1.0 percent State-level cap and ensure that waivers are granted only when appropriately justified, proposed § 200.6(c)(4) would require that a State's waiver request include: (1) State-level data; (2) assurances from the State that it has verified that each relevant LEA (a) followed the State's guidelines regarding the appropriate use of alternate assessments aligned with alternate academic achievement standards, (b) will not significantly increase the extent to which the LEA assesses students using an alternate assessment aligned with alternate academic achievement standards without a justification demonstrating a higher prevalence of enrolled students with the most significant cognitive disabilities, and (c) will address any disproportionality in the number and percentage of economically disadvantaged students, students from major racial and ethnic groups, or English learners who are assessed using alternate assessments aligned with alternate academic achievement standards; (3) a plan and timeline by which the State will meet the cap of 1.0 percent of students taking the alternate assessment aligned with alternate academic achievement standards in a subject area; and (4) additional information on State progress if the State is requesting to extend a waiver. As a whole, these elements would provide a comprehensive picture of the State's efforts to address and correct its assessment of more than 1.0 percent of students on an alternate assessment aligned with alternate academic achievement standards. Reasons for each category of requirements are further explained below.

The proposed regulations would require that a State's waiver request provide State-level data on the number and percentage of students in each subgroup defined in section 1111(c)(2), other than children with disabilities, who took the alternate assessment aligned with alternate academic achievement standards, as well as data showing that the State measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup. These data requirements are essential to provide greater transparency about which students in a State have been assessed, and which students are assessed with an alternate assessment. These data will allow the Department to take such information into account when deciding whether a State's request for a waiver is appropriately justified.

A State would also be required to include in its request for a waiver an assurance that the State has verified certain information with each LEA that the State anticipates will assess more than 1.0 percent of assessed students in any subject with an alternate assessment aligned with alternate academic achievement standards and any LEA that the State determines will significantly contribute to the State's exceeding the cap. By requiring an SEA to verify certain information with these LEAs, the proposed regulations would help ensure the State has LEA support in its efforts to come into compliance with the 1.0 percent cap by denoting each relevant LEA's commitment to appropriately implement State guidelines. The negotiators debated whether this verification should be limited to LEAs that exceed the cap and agreed that, while those LEAs should be included, there may also be LEAs that do not exceed the cap but do contribute to the State exceeding the cap because of large numbers of students taking an alternate assessment aligned with alternate academic achievement standards. The negotiators agreed that a State should verify certain information from such LEAs as well as those that exceed the cap.

The negotiators agreed that a State's waiver request should further include a plan and timeline by which the State will ensure that alternate assessments aligned with alternate academic achievement standards are administered to no more than 1.0 percent of assessed students in a subject in the State. Negotiators agreed that, if a State requests a waiver for more than one year, the State should be required to demonstrate substantial progress toward achieving each component of the prior year's plan and timeline. Establishing these expectations would ensure that only students with the most significant cognitive disabilities are assessed with the alternate assessment aligned with alternate academic achievement standards and improve both the Department's and States' ability to implement the statutory 1.0 percent State cap.

The negotiating committee devoted substantial time to considering each of the waiver criteria provisions. Some negotiators initially objected to several of the criteria, though the same negotiators conceded that clarity in advance regarding expectations for approval of waivers would be beneficial to States. Other negotiators initially advocated for more rigorous protections to ensure that States assess only those students with the most significant cognitive disabilities using an alternate assessment aligned with alternate academic achievement standards. The negotiators discussed this issue in conjunction with State guidelines and upon satisfactory resolution of how the regulations should address such guidelines, the negotiators were able to agree on the proposed waiver requirements by striking a balance between ensuring that only those students for whom an alternate assessment aligned with alternate academic achievement standards is determined appropriate take such a test while also allowing for State flexibility, particularly in those States that are meeting the requirement to test no more than 1.0 percent of students in the State in a subject using such an assessment. For additional information, see proposed § 200.6(d), discussed below, which addresses the State guideline requirement. In applying for a waiver, a State that exceeds the 1.0 percent cap must review and, as needed, revise its definition of "students with the most significant cognitive disabilities" (the guidelines for which are discussed in more detail below). The negotiators discussed this issue in conjunction with State guidelines and came to satisfactory resolution of how the regulations should address such guidelines, including the interaction between proposed waiver requirements and such guidelines.

The proposed regulations would also incorporate statutory requirements for alternate assessments and maintain previous reporting requirements, adjusted to reflect only the use of alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities.

Finally, the regulations would clarify the statutory provisions on the use of computer-adaptive alternate assessments in order to align expectations across non-adaptive and adaptive formats and ensure that reported scores reflect a student's progress against grade level academic content standards and aligned alternate academic achievement standards. The negotiating committee discussed and approved all references to computer-adaptive assessments, whether regarding general assessments, alternate assessments aligned with alternate academic achievement standards, or English language proficiency assessments, at the same time to ensure references to computer-adaptive assessments were consistent with each other and the statute.

State Guidelines

Statute: Section 1111(b)(2)(D) of the ESEA requires a State to implement safeguards to ensure that alternate assessments aligned with alternate academic achievement standards are administered judiciously. The State's guidelines required under section 612(a)(16)(C) of the IDEA must assist a child's IEP team to determine when it will be necessary for a child with the most significant cognitive disabilities to participate in an alternate assessment aligned with alternate academic achievement standards. The State must also inform parents of a student who takes an alternate assessment aligned with alternate academic achievement standards that their child's academic achievement will be measured based on those standards and how participation in an alternate assessment may delay or otherwise affect the child's completion of the requirements for a regular high school diploma. The State must also promote the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum. The State must describe in its State title I plan the steps the State has taken to incorporate universal design for learning, to the extent feasible, in designing alternate assessments and describe how general and special education teachers know how to administer alternate assessments and make appropriate use of accommodations. The State must promote using appropriate accommodations to increase the number of students with significant cognitive disabilities participating in grade-level instruction and may not preclude a student with the most significant cognitive disabilities from attempting to complete the requirements for a regular high school diploma.

Current Regulations: Current § 200.1(f) requires a State that adopts alternate academic achievement standards for students with the most significant cognitive disabilities to adopt guidelines for the use of alternate assessments aligned with those standards. The State must:

- Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards;
- Inform IEP teams that students eligible to be assessed based on alternate academic achievement standards may be from any of the disability categories listed in the IDEA;
- Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma); and
- Ensure that parents of students selected to be assessed based on alternate academic achievement standards under the State's guidelines are informed that their child's achievement will be measured based on alternate academic achievement standards.

Additionally, under current § 200.6(a)(1)(ii), a State must develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which they are enrolled, and ensure that regular and special education teachers know how to administer assessments, including making use of appropriate accommodations.

Proposed Regulations: Proposed § 200.6(d) would incorporate requirements from current § 200.1(f) and the ESEA regarding State guidelines. Specifically, proposed § 200.6(d)(1) would require a State to adopt guidelines for IEP teams to use when determining, on a case-by-case basis, which students with the most significant cognitive disabilities should take an alternate assessment aligned with alternate academic achievement standards. Such guidelines would include a State definition of "students with the most significant cognitive disabilities," that would address factors related to cognitive functioning and adaptive behavior. Under proposed § 200.6(d)(1)(i)–(ii), a student's designation as a student with the most significant cognitive disabilities may not be related to the presence or absence of a particular disability, previous low academic achievement, need for accommodations, or status as an English learner. Under proposed § 200.6(d)(1)(iii), the definition must also consider that such students are those requiring extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled.

Under proposed § 200.6(d)(2), the guidelines must also provide IEP teams with a clear explanation of the implications of a student's participation in an alternate assessment aligned with alternate academic achievement standards, including the effect on a student's opportunity to complete the requirements for a regular high school diploma and to complete those requirements on time, which must also be communicated to parents of students selected for such alternate assessments. Moreover, under proposed § 200.6(d)(4), a State may not establish guidelines in such a manner as to preclude students who take such alternate assessments from attempting to complete the requirements for a regular high school diploma. Finally, under proposed § 200.6(d)(7), the guidelines must emphasize that students with significant cognitive disabilities who do not meet the State's definition of "students with the most significant cognitive disabilities" must receive instruction for the grade in which the student is enrolled and be assessed against the challenging State academic achievement standards for the grade in which the student is enrolled.

Reasons: The proposed regulations would incorporate relevant information previously found in § 200.1(f) because it relates primarily to administering assessments and not to challenging State academic standards. The negotiators agreed that referencing these topics in this section, rather than in § 200.1, would make the regulations more coherent.

Some negotiators argued strongly for defining the term "students with the most significant cognitive disabilities" in the proposed regulation to ensure that a State incorporates particular factors recognized in the field with respect to the characteristics of such students and to facilitate compliance with the State-level 1.0 percent cap on participation in alternate assessments aligned with alternate academic achievement standards. Ultimately, the negotiating committee agreed, instead of including a definition of this term, to add references to key aspects a State must consider in crafting its own definition to the requirements for State guidelines in proposed § 200.6(d)(1).

The determination that a student will take an alternate assessment aligned with alternate academic achievement standards could affect the student's opportunity to complete the requirements for a regular high school diploma or the time such student would need to complete high school. Accordingly, the Department believes it is important that parents and IEP team members are aware of the potential consequences of such an assignment. Many negotiators expressed strong support for ensuring that State guidelines maximize IEP and parent information about the impact a student's assignment to an alternate assessment aligned with alternate academic achievement standards could have. The proposed regulations in § 200.6(d)(2)–(3) would require State guidelines to provide such information to all relevant parties, and to do so in a manner consistent with the requirement in proposed § 200.2(e) to provide information to parents in a format accessible to them and, to the extent practicable, in writing in a language they can understand, with oral translations in all other cases. These guardrails provided committee members sufficient confidence that the regulation would lead to strong implementation of the statutory cap, even for those who previously favored defining "students with the most significant cognitive disabilities" in the proposed regulations.

English Learners

Statute: Section 1111(b)(2)(B)(vii)(III) of the ESEA requires a State's assessment system to provide for the participation of all students, including English learners. English learners must be assessed in a valid and reliable manner and provided appropriate accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. Section 1111(b)(2)(F) requires a State to identify in its title I State plan the languages other than English that are present to a significant extent in the student population of the State and indicate the languages for which annual academic assessments are not available and are needed. Notwithstanding this provision, a State must assess an English learner on the State's reading/language arts assessment in English after the student has attended public schools in the United States (except for schools in Puerto Rico) for three or more consecutive years. On a case-by-case basis, an LEA may assess a student's knowledge in reading/language arts in a language or form other than English for two additional years if the student has not yet reached a level of English proficiency sufficient to yield valid and reliable information on what the student knows and can do on tests written in English.

Current Regulations: Current § 200.6(b)(1) requires each State to include limited English proficient students in a valid and reliable manner in their academic assessment systems. Specifically, under current § 200.6(b)(1)(i), a State must provide limited English proficient students with reasonable accommodations and, to the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what such students know and can do. Current § 200.6(b)(1)(ii) requires each State, in its title I State plan, to identify languages other than English that are present in the student population served by the SEA and to indicate the languages for which academic assessments are not available and are needed. For each language for which assessments are needed, a State must make every effort to develop such assessment and may request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

Additionally, current § 200.6(b)(2) requires a State to assess limited English proficient students' achievement in English in reading/language arts if those students have been in public schools in the United States (except schools in Puerto Rico) for three or more consecutive years, and clarifies that this requirement does not exempt the State from assessing limited English proficient students for three years. Under the current regulations, an LEA may continue, for no more than two years, to assess a limited English proficient student in reading/language arts in the student's native language if the LEA determines, on a case-by-case basis, that the student has not reached a sufficient level of English language proficiency to yield valid and reliable information on reading/language arts assessments written in English.

Proposed Regulations: The proposed regulations in § 200.6(f)(1)(i) would carry over the requirements from current § 200.6(b)(1)(i), because the ESEA maintains the requirement that English learners be assessed in a valid and reliable manner that includes reasonable accommodations. Proposed § 200.6(f)(1)(i)(A) would clarify that English learners who are also identified as students with disabilities under proposed § 200.6(a) must be provided accommodations as necessary based on both their status as English learners and their status as students with disabilities.

Proposed § 200.6(f)(1)(ii)(A) would require a State to ensure that the use of appropriate accommodations does not deny an English learner the opportunity to participate in the assessment, or any of the benefits from participation in the assessment, that are afforded to students who are not English learners, including that English learners who employ appropriate accommodations, consistent with State accommodations guidelines, can also use the results of such assessments for the purpose of entrance into to postsecondary education or training programs or for placement into credit-bearing courses in such programs.

The requirements in proposed § 200.6(f)(1)(ii)(B)–(E) would clarify a State's responsibility to provide for the assessment of English learners in the language most likely to yield accurate data on what those students know and can do in academic content areas, to the extent practicable. Specifically, a State would be required to provide in its title I State plan a definition for "languages that are present to a significant extent in the participating student population" and identify which languages other than English are included in this definition. In determining which languages are present to a significant extent, a State must ensure that its definition encompasses at least the most populous language other than English spoken in the participating student population, and consider languages spoken by distinct English learner populations (including those who are migratory, immigrants, or Native Americans), as well as languages that are spoken by significant numbers of English learners in certain LEAs or in certain grade levels.

The State must then identify in its title I State plan whether assessments are available in any languages other than English and, if so, for which grades and content areas. For the languages determined to be present to a significant extent by the State, the State must also indicate in which languages academic assessments are not currently available but are needed. For each of those languages, a State would be required to describe how it will make every effort to develop assessments in languages other than English by, at a minimum, providing a plan and timeline, describing the process it used to gather public input and consult with key stakeholders, and, if needed, providing an explanation for why it was unable to develop assessments in the languages that are present to a significant extent.

Reasons: The ESEA requires the provision of appropriate accommodations for English learners, including assessments in languages other than English if needed and practicable, in order to ensure that English learners are fairly and accurately assessed. The proposed regulations echo these statutory requirements. Additionally, negotiators agreed it is important to clarify that English learners who are also students with disabilities must be provided accommodations for both English learner status and status as a student with a disability because this population has unique needs that are sometimes overlooked.

The statutory provisions pertaining to assessments in languages other than English remain very similar to the requirements of the ESEA, as amended by the NCLB. However, section 1111(b)(2)(F) now requires that States make every effort to develop assessments in languages "present to a significant extent in the participating student population"; given this new language in the ESEA, as amended by the ESSA, the proposed regulations provide relevant clarification. The proposed regulations would provide criteria to guide States in determining which languages other than English are present to a significant extent so that States can ensure that all English learners are included in the assessment system in a valid and reliable manner and to facilitate States' ability to make every effort to develop needed assessments. Rather than specify a particular definition for languages "present to a significant extent in the participating student population," the negotiating committee recommended higher-level criteria that a State must follow in establishing its definition of this term. These criteria, laid out in proposed § 200.6(f)(1)(iv), would reflect a minimum expectation for a State to meet the statutory requirements in this area, as well as critical considerations raised by negotiators (for example, considering languages that are spoken by significant portions of students in particular LEAs).

In recent years, a number of States have developed or provided content assessments in the native languages of English learners. For example, in the past, Washington state provided translated versions of math and science assessments for all grades in Chinese, Korean, Russian, Somali, Spanish, and Vietnamese; Michigan provided math and science assessments for all grades in Spanish and Arabic. In school year 2013–2014, 13 States offered reading/language arts, mathematics, or science assessments in languages other than English. Two consortia of States, the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (Smarter Balanced), offered native language options during their first year of administration in school year 2014–2015. Twenty-one States, the District of Columbia, the U.S. Virgin Islands, and the Department of Defense Education Activity (DoDEA) are in one of these assessment consortia. Smarter Balanced offers a full "stacked" Spanish translation of its math assessments (*i.e.*, the complete Spanish and English versions are both provided to the student), pop-up glossaries in the 10 most common languages across the States in the consortium, and word-to-word dictionaries in other languages. PARCC provides a Spanish translation of its math assessments at the discretion of a State and offers translated directions and parent reports in the most common languages, with word-to-word dictionaries available for other languages.

Each State must define languages "present to a significant extent," identify those languages, and make every effort to develop or offer assessments in those languages (including creating a plan and timeline for developing assessments in such languages, gathering public input, and consulting with key stakeholders). If there is a significant reason preventing a State from completing the development of these assessments, proposed § 200.6(f)(ii)(E)(*3*) would allow a State to provide an explanation of these overriding factors. Overall, negotiators wanted to ensure that English learners are included in academic assessments in a valid and reliable manner, including that States provide assessments in languages other than English when needed to gather accurate data on the knowledge and skills of English learners in academic content areas. Given that not all States have yet been able to develop assessments in languages other than English, negotiators agreed that providing clarity about what steps a State must take to demonstrate it has met the statutory requirements and leaving open flexibility if a State faces significant obstacles in developing such assessments would be helpful for the State and, ultimately, for students themselves.

Students in Native American Language Schools or Programs

Statute: Section 1111(b)(2)(B)(ix) of the ESEA specifically excludes students in Puerto Rico from the requirement to measure knowledge of reading/language arts in English after three or more consecutive years of enrollment in schools in the United States because the language of instruction in Puerto Rico is Spanish.

Current Regulations: None.

Proposed Regulations: Proposed § 200.6(f)(2)(i) would provide an additional exemption to the requirement that students must be assessed in reading/language arts using assessments written in English after three years of attending schools in the United States (or five years, as determined by an LEA on a case-by-case basis) for students in Native American language programs or schools, pursuant to certain requirements laid out in proposed § 200.6(g).

Under the proposed regulations, this exemption would be available only for students enrolled in schools or programs that provide instruction primarily in a Native American language. Further, students enrolled in these Native American language schools or programs may be excluded from being assessed using a reading/language arts assessment written in English only if the State: Provides an assessment of reading/language arts in that Native American language that meets the requirements of proposed § 200.2 and has been subject to the Department's assessment peer review; continues to assess the English language proficiency of all English learners enrolled in such schools or programs using the State's annual English language proficiency assessment; and ensures that students in such schools or programs are assessed in reading/language arts, using assessments written in English, by no later than the end of the eighth grade.

Finally, proposed § 200.6(h) would incorporate the definition of "Native

American" from section 8101(34) of the ESEA.

Reasons: The Federal government has a trust responsibility to American Indian tribes. As part of this responsibility, Congress has emphasized the importance of preserving and revitalizing Native American languages in many Federal laws, including the ESEA, which contains support for schools and programs that use Native American languages as the primary language of instruction. Specifically, the following sections of the ESEA are relevant to this issue:

- Section 6133, which authorizes a new discretionary grant program for Native American and Alaska Native language immersion schools and programs to maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages;
- Section 3127, which addresses programs for Native American children studying Native American languages;
- Section 6111, which states that a purpose of Indian education is to meet the unique cultural, language, and educational needs of such students;
- Section 6205, which authorizes grants to entities operating Native Hawaiian programs of instruction in the Native Hawaiian language and establishes a priority for use of the Hawaiian language in instruction; and
- Section 6304, which authorizes use of grant funds for instructional programs that make use of Alaska Native languages and native language immersion programs or schools.

In addition, the Native American Languages Act of 1990 (NALA) requires all Federal agencies to encourage and support the use of Native American languages as a medium of instruction and states that it is the policy of the United States to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages. Moreover, Executive Order 13592, "Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities," sets forth the Administration's policy, including "to help ensure that American Indian/Alaska Native students have an opportunity to learn their Native languages." These declarations of Federal policy are supported by growing recognition of the importance of Native language preservation in facilitating educational success for Native American students. In a 2007 study by Teachers of English to Students of Other Languages (TESOL),[1] the majority of Native American youth surveyed stated that they value their Native American language, view it as integral to their sense of self, want to learn it, and view it as a means of facilitating their success in school and life.

As a result, the negotiating committee recommended including the proposed exemption, which would be available only for students enrolled in schools or programs that provide instruction primarily in a Native American language (*i.e.,* 50 percent or more of instructional time), including students identified as English learners and students without such designation. The additional requirements for this exemption are designed to ensure high-quality programs and outcomes for students. For students in a Native American language program who are also English learners, the LEA would still be required to administer the annual English language proficiency assessment as required under section 1111(b)(2)(G) and to provide English language services pursuant to civil rights obligations. The requirement to use an assessment of reading/language arts in English no later than the eighth grade is intended to ensure that students are able to succeed in high school and postsecondary institutions in which the language of instruction is English. There are many different models of Native American language programs. Some start as immersion in the Native American language and gradually transition to more English throughout elementary school, whereas others adopt a bilingual approach across the grades. States or districts would have the flexibility under this exemption to decide in which grade to begin administering the reading/language arts assessment in English, so long as students begin taking such assessments in English no later than the eighth grade.

Importantly, this exemption in proposed § 200.6(g) reflects the input of negotiators, especially tribal leader negotiators on the negotiating committee. The tribal leader negotiators emphasized the Federal government's responsibility to help revitalize Native American languages in light of the history of Federal eradication of those languages, including through boarding schools where students were stripped of their tribal identities and languages. They also emphasized the Federal commitment to preserve Native American languages as found in the NALA as well as the ESEA. They articulated how the provision of reading/language arts assessments in Native American languages is critical for promoting high-quality instruction in Native American languages, which in turn facilitates improved educational outcomes for Native American students in these schools and programs, as well as helping to ensure the survival of Native American languages for future generations.

The definition of "Native American" in proposed § 200.6(h) would incorporate the definition of this term in section 8101(34) of the ESEA. Under that definition, "Native American" and "Native American language" have the same meaning as in section 103 of the NALA. Under NALA, "Native American" means an Indian (as defined in 20 U.S.C. 7491(3), which is now section 6151 of the ESEA, but was unchanged substantively by the ESSA), Native Hawaiian, or Native American Pacific Islander. The definition of "Indian" in section 6151 of the ESEA, includes Alaska Natives, as well as members of any federally recognized or State-recognized tribes. Because it is difficult to ascertain the full definition from section 8101(34) of the ESEA alone, we propose to provide the full definition in this section for the convenience of the public.

Assessing English Language Proficiency

Statute: Under section 1111(b)(2)(G) and sections 3111(b)(2)(E)(i), 3113(b)(6)(A), 3115(g)(2)(A), 3116(b)(2)(A), and 3121(a)(3) of the ESEA, a State must develop and administer a statewide annual assessment of English language proficiency to all English learners in schools served by the SEA. The English language proficiency assessment must be aligned with the State's English language proficiency standards under section 1111(b)(1)(F), which must be derived from the four domains of speaking, listening, reading, and writing, address the different proficiency levels of English learners, and be aligned with the challenging State academic standards. Under section 1111(b)(2)(J)(ii)(II), if a State develops a computer-adaptive English language proficiency assessment, the State must ensure that the assessment measures a student's language proficiency, which may include growth toward proficiency, in order to measure the student's acquisition of English. If a State assesses students with the most significant cognitive disabilities with an alternate assessment aligned with alternate academic achievement standards, the

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[1] Romero-Little, Mary Eunice, Teresa L. McCarty, Larisa Warhol, and Oiedia Zepeda. 2007. "Language Policies in Practice: Preliminary Findings from a Large-Scale Study of Native American Language Shift." TESOL Quarterly 41:3, 607–618.

State must have an alternate English language proficiency assessment for those students who are English learners in accordance with section 612(a)(16) of the IDEA.

Current Regulations: Current § 200.6(b)(3) requires each State to require each LEA to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

Proposed Regulations: Proposed § 200.6(f)(3)(i) would require each State to develop a uniform statewide assessment of English language proficiency (including skills in the four recognized domains of language) and require that its LEAs annually assess the English language proficiency of all English learners served using this statewide English language proficiency assessment.

Proposed § 200.6(f)(3)(ii) would require that a State's annual English language proficiency assessment provide coherent and timely information about each English learner's attainment of the State's English language proficiency standards, including information to be provided to parents consistent with the requirements of proposed § 200.2(e). Further, the proposed regulations would require that a State's English language proficiency assessment meet certain requirements for validity and reliability under proposed § 200.2(b)(2)–(4) and be submitted for Federal peer review under section 1111(a)(4).

If a State develops a computer-adaptive English language proficiency assessment, it would be required to ensure that the assessment measures a student's English language proficiency (which may include growth toward proficiency) and meets all other requirements for English language proficiency assessments in general.

For English learners who are also students with disabilities under proposed § 200.6(a), proposed § 200.6(f)(3)(iv) would provide that a State must provide appropriate accommodations on the English language proficiency assessment and, for English learners who are also students with the most significant cognitive disabilities covered under proposed § 200.6(a)(1)(ii) who cannot participate in the English language proficiency assessment even with accommodations, a State must provide for an alternate English language proficiency assessment.

Reasons: The proposed regulations pertaining to a State's English language proficiency assessment under section 1111(b)(2)(G) of the ESEA would largely reflect statutory updates (*e.g.*, the addition of computer-adaptive English language proficiency assessments) and provide clarification, as needed, to the statutory language.

First, the proposed regulations would require uniform English language proficiency tests across the State. The ESEA refers in several places, including in section 3102(b)(1)(E)(i) and section 3102(b)(3)(A)(ii), to the annual English language proficiency assessment as the "State's English language proficiency assessment," though section 1111(b)(2)(G) does not expressly refer to this assessment as a statewide assessment. Currently, however, all States do use a uniform statewide assessment of English language proficiency. To ensure consistency with current practice, promote technical validity, quality, and comparability of English language proficiency assessment results across LEAs, and clarify an area of statutory ambiguity, proposed § 200.6(f)(3)(i)(A) would make it clear that the annual English language proficiency assessment must be a uniform statewide assessment. Negotiators agreed without extensive debate that using a single statewide English language proficiency assessment is necessary to promote quality, consistency, and comparability.

Due to the increased importance of the English language proficiency assessment, especially with the inclusion of progress toward achieving English language proficiency in the accountability system under section 1111(c) of the ESEA, negotiators also emphasized that these assessments should be submitted for Federal peer review and held to the same requirements for validity and reliability as academic content assessments under proposed § 200.2(b)(2), (4), and (6). Additionally, negotiators considered it important to require that information be provided to parents about student attainment of a State's English language proficiency standards, as measured by the annual English language proficiency assessment, in a language and form that they can understand in order to ensure parents have all needed information to support their children and to advocate for their children's educational opportunities and appropriate English language services.

The proposed regulation also addresses the inclusion of English learners who are also students with disabilities in the annual English language proficiency assessment. Proposed § 200.6(f)(3)(iv) would clarify that States must provide appropriate accommodations for English learners who are also students with disabilities as needed to measure their English language proficiency on the annual English language proficiency assessment, which is required by other provisions of the ESEA, as well as by the IDEA and other Federal statutes.

Finally, proposed § 200.6(f)(3)(v) would require that, if an English learner with the most significant cognitive disabilities cannot participate in the annual English language proficiency assessment even with accommodations, a State must provide for an alternate English language proficiency assessment for such a student. This is required by section 612 of the IDEA, as amended by the ESSA, and was noted in the Department's non-regulatory guidance from 2014[2] and 2015.[3]

Recently Arrived English Learners

Statute: With respect to a recently arrived English learner who has been enrolled in a school in one of the 50 States or the District of Columbia for less than 12 months, a State may, under section 1111(b)(3) of the ESEA, exclude the student from one administration of the State's reading/language arts assessment.

Current Regulations: Current § 200.6(b)(4) governs the limited exemption for recently arrived limited English proficient students in State assessment systems. Under the current regulations, a State may exempt a recently arrived limited English proficient student from one administration of the State's reading/language arts assessment. Section 200.6(b)(4)(iv) defines a "recently arrived limited English proficient student" as a student with limited proficiency in English who has attended schools in the United States (*i.e.*, schools in the 50 States and the District of Columbia) for less than 12 months.

Under the current regulations, if a State does not assess a recently arrived English proficient student on the State's reading/language arts assessment, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the

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[2] U.S. Department of Education. 2014. Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives. Available at *http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-elp-swd.pdf.*

[3] U.S. Department of Education. 2015. Addendum to Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives. Available at *http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/addendum-q-and-a-on-elp-swd.pdf.*

State's reading/language arts assessment in a native language. Section 200.6(b)(4)(i)(C) requires a State and its LEAs to report on State and district report cards the number of limited English language proficient students who are not assessed on the State's reading language arts assessment.

Additionally, the current regulations reiterate that the exemption for recently arrived limited English proficient students does not relieve an LEA of its responsibility to provide such students with appropriate instruction to assist them in gaining English language proficiency as well as content knowledge in reading/language arts and math, or from its responsibility to assess the student's English language proficiency or mathematics achievement.

Proposed Regulations: Proposed § 200.6(f)(4) would update the current regulations to reflect a statutory change in the ESEA pertaining to the definition of a "recently arrived English learner." Pursuant to the statute, the proposed regulations would define a "recently arrived English learner" as an English learner who has been enrolled in schools in the United States for less than 12 months. We would also clarify in proposed § 200.6(f)(4)(iii) that, though recently arrived English learners may be exempted from one administration of the reading/language arts assessment, these students must be assessed in mathematics and science consistent with the frequency described in proposed § 200.5(a). The remaining proposed regulations in § 200.6(f)(4) would carry over the current regulations, with only minor changes to reflect technical updates from the statute (*e.g.*, updated statutory citations).

Reasons: While the ESEA made changes to the inclusion of recently arrived English learners in accountability, it made no changes to the provisions pertaining to the inclusion of recently arrived English learners in a State's academic content assessments; that is, recently arrived English learners may still be exempted from one, and only one, administration of the reading/language arts assessment during a student's first 12 months in schools in the United States. Thus, the proposed regulations only reflect minor technical changes in this area and one area of additional clarification. Proposed § 200.6(f)(4)(iii) would clarify that recently arrived English learners must be assessed in science (as well as mathematics, which is already reflected in current § 200.6(b)(4)(iii)), according to the frequency described in proposed § 200.5(a), to reiterate for States that this exception only applies to reading/language arts. Additionally, the definition of a "recently arrived English learner" in proposed § 200.6(f)(5)(i) reflects the statutory change that now defines recently arrived English learners as those who have been enrolled in schools in the United States for less than 12 months, rather than those who have attended schools in the United States for less than 12 months.

Highly Mobile Students

Statute: Section 1111(b)(2)(B)(vii) of the ESEA requires a State's assessment system to provide for the participation of all students, including students who are highly mobile and who may not attend the same school or LEA for a full academic year.

Current Regulations: Current § 200.6(c) reiterates that a State must include migratory and other mobile students in its academic assessment system even if those students are not included for accountability purposes. Additionally, § 200.6(d) reinforces that a State must include students experiencing homelessness in its academic assessment, reporting, and accountability systems, but clarifies that States need not disaggregate academic assessment data on students experiencing homelessness separately.

Proposed Regulations: Proposed § 200.6(i) would clarify that a State must include all students, including highly mobile student populations, in its assessment system, including migratory children, homeless children or youth, children in foster care, and students with a parent who is a member of the Armed Forces on active duty. Proposed § 200.2(b)(11) would include the definitions associated with these student populations.

Reasons: Proposed § 200.6(i), which addresses highly mobile students, would build on current regulations and continue to reiterate that a State must include migratory children and homeless children and youth in the State's assessment system. Since the ESEA brings to the forefront additional highly mobile student populations (specifically, children in foster care and military-connected students), the proposed regulations would broaden the current regulations to emphasize these vulnerable student populations as well. Given the transience and mobility associated with these populations, and research showing that highly mobile students are more likely than their peers to experience negative educational outcomes,[4] we consider it crucial to reaffirm the requirement that a State must include all such students in the assessment system and in the subgroups of students included in the accountability system under section 1111(c)(2) of the ESEA.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is significant and subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things

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[4] See, for example, Voight, A., Shinn, M. & Nation, M. 2012. "The longitudinal effects of residential mobility on the academic achievement of urban elementary and middle school students." *Educational Researcher* 41(9), 385–392; and Rumberger, R. & Larson, K. 1998. Student mobility and the increased risk of high school dropout. *American Journal of Education* 107(1), 1–35.

and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for effective and efficient administration of the assessment provisions in part A of title I of the ESEA. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Discussion of Costs and Benefits

The Department believes that this regulatory action would generally not impose significant new costs on States or their LEAs. This action would implement and clarify the changes to the assessment provisions in part A of title I of the ESEA made by the ESSA, which as discussed elsewhere in this notice are limited in scope. The costs to States and LEAs for complying with these changes would similarly be limited, and would be financed with Federal education funds, including funds available under Grants for State Assessments and Related Activities.

Moreover, the proposed regulations would implement statutory provisions that could ease assessment burden on States and LEAs. For example, proposed § 200.5(b) would implement the provision in section 1111(b)(2)(C) of the ESEA under which a State that administers an end-of-course mathematics assessment to meet the high school assessment requirement may exempt an eighth-grade student who takes the end-of-course assessment from also taking the mathematics assessment the State typically administers in eighth grade (provided that the student takes a more advanced mathematics assessment in high school), thus avoiding the double-testing of eighth-grade students who take advanced mathematics coursework.

In general, the Department believes that the costs associated with the proposed regulations (which are discussed in more detail below for potential cost-bearing requirements not related to information collection requirements) are outweighed by their benefits, which would include the administration of assessments that produce valid and reliable information on the achievement of all students, including students with disabilities and English learners, that can be used by States to effectively measure school performance and identify underperforming schools, by LEAs and schools to inform and improve classroom instruction and student supports, and by parents and other stakeholders to hold schools accountable for progress, ultimately leading to improved academic outcomes and the closing of achievement gaps, consistent with the purpose of title I of the ESEA.

Locally Selected, Nationally Recognized High School Academic Assessments

Proposed § 200.3(b) would implement the new provision in section 1111(b)(2)(H) of the ESEA under which a State may permit an LEA to administer a State-approved nationally recognized high school academic assessment in reading/language arts, mathematics, or science in lieu of the high school assessment the State typically administers in that subject. If a State seeks to approve a nationally recognized high school academic assessment for use by one or more of its LEAs, proposed § 200.3(b)(1) would require, consistent with the statute, that the State establish technical criteria to determine whether the assessment meets specific requirements for technical quality and comparability. In establishing these criteria, we expect States to rely in large part on existing Department assessment peer review guidance and other assessment technical quality resources. Accordingly, we believe that the costs of complying with proposed § 200.3(b)(1)—which could be financed, in particular, with funds available under Grants for State Assessments and Related Activities—would be minimal for the 20 States that we estimate will seek to approve a nationally recognized high school academic assessment for LEA use. Further, we believe the costs of this proposed regulation are outweighed by its benefit to LEAs in those States, namely, the flexibility to administer for accountability purposes the assessments they believe most effectively measure, and can be used to identify and address, the academic needs of their high school students.

Native Language Assessments

Proposed § 200.6(f)(1) would implement the new provision in section 1111(b)(2)(F) of the ESEA requiring a State to make every effort to develop, for English learners, annual academic assessments in languages other than English that are present to a significant extent in the participating student population. In doing so, proposed § 200.6(f)(1) would require a State, in its title I State plan, to define "languages other than English that are present to a significant extent in the participating student population," ensure that its definition includes at least the most populous language other than English spoken by the participating student population, describe how it will make every effort to develop assessments consistent with its definition where such assessments are not available and are needed, and explain, if applicable, why it is unable to complete the development of those assessments despite making every effort. Although a State may incur costs in complying with the requirement to make every effort to develop these assessments consistent with its definition, we do not believe these costs would be significant, in part because under section 1111(b)(2)(F)(ii) a State may request assistance from the Secretary in identifying appropriate linguistically accessible academic assessment measures. We believe the costs of complying with this requirement are outweighed by its potential benefits to SEAs and their LEAs, which would include fairer and more accurate assessments of the achievement of English learners.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.2.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary proposes to certify that these proposed requirements would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the majority of LEAs that receive ESEA funds qualify as small entities under this definition, the requirements proposed in this document would not have a significant economic impact on these small LEAs because the costs of implementing these requirements would be covered by funding received by States under Federal education programs including Grants for State Assessments and Related Activities. The Department believes the benefits provided under this proposed regulatory action outweigh the burdens on these small LEAs of complying with the proposed requirements. In particular, the proposed requirements would help ensure that assessments administered in these LEAs produce valid and reliable information on the achievement of all students, including students with disabilities and English learners, that can be used to inform and improve classroom instruction and student supports, ultimately leading to improved student academic outcomes. The Secretary invites comments from small LEAs as to whether they believe the requirements proposed in this document would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed §§ 200.2, 200.3, 200.5, 200.6, and 200.8 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control number assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

The proposed regulations would affect a currently approved information collection, 1810–0576. Under 1810–0576, the Department is approved to collect information from States, including assessment information. On May 31, 2016, the Department published in the **Federal Register** a notice of proposed rulemaking (81 FR 34539), which identified proposed changes to information collection 1810–0576. These proposed regulations would result in additional changes to the existing information collection, described below.

Proposed § 200.2(d) would require States to submit evidence regarding their general assessments, alternate assessments, and English language proficiency assessments for the Department's peer review process, and proposed § 200.2(b)(5)(ii) would require that States make evidence of technical quality publicly available. Proposed § 200.3(b)(2)(ii) would require a State that allows an LEA to administer a locally selected, nationally recognized high school academic assessment in place of the State assessment to submit the selected assessment for the Department's peer review process. We anticipate that 52 States will spend 200 hours preparing and submitting evidence regarding their content assessments, alternate assessments, and English language proficiency assessments for peer review, and that 20 States will spend an additional 100 hours preparing and submitting evidence relating to locally selected, nationally recognized high school academic assessments. Accordingly, we anticipate the total burden over the three-year period for which we seek information collection approval to be 12,400 hours for all respondents, resulting in an increased annual burden of 4,133 hours.

Proposed § 200.5(b)(4) would require a State that uses the middle school mathematics exception to describe in its title I State plan its strategies to provide all students in the State the opportunity to be prepared for and take advanced mathematics coursework in middle school. We anticipate that this will not increase burden, as information collection 1810–0576 already accounts for the burden associated with preparing the title I State plan.

Proposed § 200.6(b)(2)(i) would require all States to develop, disseminate information to schools and parents, and promote the use of appropriate accommodations to ensure that all students with disabilities are able to participate in academic instruction and assessments. We anticipate that 52 States will spend 60 hours developing and disseminating this information annually, resulting in an annual burden increase of 3,120 hours.

Proposed § 200.6(c)(3)(iv) would require all States to make publicly available information submitted by an LEA justifying the need of the LEA to exceed the cap on the number of students with the most significant cognitive disabilities who may be assessed in a subject using an alternate assessment aligned with alternate academic achievement standards. We anticipate that 52 States will spend 20 hours annually making this information available, resulting in an annual burden increase of 1,040 hours.

Proposed § 200.6(c)(4) would allow a State that anticipates that it will exceed the cap for assessing students with the most significant cognitive disabilities with an alternate assessment aligned with alternate academic achievement standards to request a waiver for the relevant subject for one year. We anticipate that 15 States will spend 40 hours annually preparing a waiver request, resulting in an annual burden increase of 600 hours.

Proposed § 200.6(c)(5) would require each State to report annually to the Secretary data relating to the assessment of children with disabilities. We anticipate that 52 States will spend 40 hours annually preparing a waiver request, resulting in an annual burden increase of 2,080 hours.

Proposed § 200.6(d)(3) would establish requirements for each State that adopts alternate academic achievement standards for students with the most significant cognitive disabilities. Such a State would be required to ensure that parents of students with the most significant cognitive disabilities assessed using an alternate assessment aligned with alternate academic achievement standards are informed that their child's achievement will be measured based on alternate academic achievement standards, and informed how participation in such assessment may delay or otherwise affect the student from completing the requirements for a regular high school diploma. We anticipate that 52 States will spend 100 hours annually ensuring that relevant parents receive this information, resulting in an annual burden increase of 5,200 hours.

Proposed § 200.8(a)(2) would require a State to provide to parents, teachers, and principals individual student interpretive, descriptive, and diagnostic reports, including information regarding academic achievement on academic assessments. Proposed § 200.8(b)(1) would require a State to produce and report to LEAs and schools itemized score analyses. We anticipate that 52 States will spend 1,500 hours annually providing this information, resulting in a total burden increase of 78,000 hours.

COLLECTION OF INFORMATION FROM SEAs—ASSESSMENTS AND NOTIFICATION

Regulatory section	Information collection	OMB Control number and estimated change in burden
§ 200.2(b), § 200.2(d), § 200.3(b)(2)(ii).	States would be required to submit evidence for the Department's peer review process, and to make this evidence available to the public.	OMB 1810–0576. The burden would increase by 4,133 hours.
§ 200.5(b)(4)	States would be required to describe in the title I State plan strategies to provide all students with the opportunity to take advanced mathematics coursework in middle school.	OMB 1810–0576. No change in burden, as this burden is already considered in the burden of preparing a title I State plan.
§ 200.6(b)(2)(i)	States would be required to disseminate information regarding the use of appropriate accommodations to schools and parents.	OMB 1810–0576. The burden would increase by 3,120 hours.
§ 200.6(c)(3)(iv)	Certain States would be required to make publicly available LEA-submitted information about the need to exceed the cap for assessing students with the most significant cognitive disabilities with an alternate assessment aligned with alternate academic achievement standards.	OMB 1810–0576. The burden would increase by 1,040 hours.
§ 200.6(c)(4)	Certain States would request a waiver from the Secretary, to exceed the cap for assessing students with the most significant cognitive disabilities with an alternate assessment aligned with alternate academic achievement standards.	OMB 1810–0576. The burden would increase by 600 hours.
§ 200.6(c)(5)	States would be required to report to the Secretary data relating to the assessment of children with disabilities.	OMB 1810–0576. We anticipate the burden would increase by 2,080 hours.
§ 200.6(d)(3)	States that adopt alternate achievement standards for students with the most significant cognitive disabilities would be required to ensure certain parents are provided with information.	OMB 1810–0576. The burden would increase by 5,200 hours.
§ 200.8(a)(2), § 200.8(b)(1)	States would be required to provide student assessment reports to States, teachers, and principals, as well as itemized score analyses for LEAs and schools.	OMB 1810–0576. The burden would increase by 78,000 hours.

Proposed § 200.3(c)(1)(i) would require an LEA that intends to request approval from a State to use a locally selected, nationally recognized high school academic assessment in place of the statewide academic assessment to notify parents. Proposed § 200.3(c)(3) would require any LEA that receives such approval to notify all parents of high school students it serves that the LEA received approval and will use these assessments. Finally, proposed § 200.3(c)(4) would require the LEA to notify both parents and the State in any subsequent years in which the LEA elects to administer a locally selected, nationally recognized high school academic assessment. We anticipate that 850 LEAs will spend 30 hours preparing each notification and that, over the three-year period for which we seek approval, an LEA will be required to conduct these notifications four times.

Accordingly, we anticipate the total burden over the three-year period for which we seek information collection approval to be 102,000 hours, resulting in an increased annual burden of 34,000 hours.

COLLECTION OF INFORMATION FROM LEAS—PARENTAL NOTIFICATION

Regulatory section	Information collection	OMB Control number and estimated change in burden
§ 200.3(c)(1)(i), § 200.3(c)(3), § 200.3(c)(4).	Certain LEAs would be required to notify parents of high school students about selected assessments.	OMB 1810–0576. The burden would increase by 34,000 hours.

We have prepared an Information Collection Request (ICR) for these collections. If you want to review and comment on the ICR, please follow the instructions listed under the **ADDRESSES** section of this notice. Please note the Office of Information and Regulatory Affairs (OMB) and the Department review all comments on an ICR that are posted at *www.regulations.gov.* In preparing your comments, you may want to review the ICR in *www.regulations.gov* or in *www.reginfo.gov.* The comment period will run concurrently with the comment period of the NPRM. We consider your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collections of information contained in these regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by August 10, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting Docket ID ED–2016–OESE–0053 or via postal mail commercial delivery or hand delivery. Please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments if your comments relate to the information collection for these proposed regulations. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., Mailstop L–OM–2–2E319LBJ, Room 2E115, Washington, DC 20202–4537. Comments submitted by fax or email and those submitted after the comment period will not be accepted.

FOR FURTHER INFORMATION CONTACT: Electronic mail *ICDocketMgr@ed.gov.* Please do not send comments here.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.010 Title I Grants to Local Educational Agencies; and 84.369 Grants for State Assessments and Related Activities)

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated: July 1, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C 6301–6576, unless otherwise noted.

■ 2. Section 200.2 is revised to read as follows:

§ 200.2 State responsibilities for assessment.

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts, and science.

(2)(i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging State academic standards.

(ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

(b) The assessments required under this section must—

(1)(i) Except as provided in §§ 200.3, 200.5(b), and 200.6(c) and section 1204 of the Act, be the same assessments used to measure the achievement of all students; and

(ii) Be administered to all students consistent with § 200.5(a);

(2)(i) Be designed to be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) Be developed, to the extent practicable, using the principles of universal design for learning. For the purposes of this section, "universal design for learning" means a scientifically valid framework for guiding educational practice that—

(A) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and English learners;

(3)(i)(A) Be aligned with the challenging State academic standards; and

(B) Provide coherent and timely information about student attainment of those standards and whether a student is performing at the grade level in which the student is enrolled;

(ii)(A)(*1*) Be aligned with the challenging State academic content standards; and

(*2*) Address the depth and breadth of those standards; and

(B)(*1*) Measure student performance based on challenging State academic achievement standards that are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards consistent with section 1111(b)(1)(D) of the Act; or

(*2*) With respect to alternate assessments for students with the most significant cognitive disabilities, measure student performance based on alternate academic achievement standards defined by the State consistent with section 1111(b)(1)(E) of the Act that reflect professional judgment as to the highest possible standards achievable by such students to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive, integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014; and

(4)(i) Be valid, reliable, and fair for the purposes for which the assessments are used; and

(ii) Be consistent with relevant, nationally recognized professional and technical testing standards;

(5) Be supported by evidence that—

(i) The assessments are of adequate technical quality—

(A) For each purpose required under the Act; and

(B) Consistent with the requirements of this section; and

(ii) Is made available to the public, including on the State's Web site;

(6) Be administered in accordance with the frequency described in § 200.5(a);

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content, as defined by the State. These measures may—

(i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of—

(i) Constructed-response, short answer, or essay questions; or

(ii) Items that require a student to analyze a passage of text or to express opinions;

(9) Provide for participation in the assessments of all students in the grades assessed consistent with §§ 200.5(a) and 200.6;

(10) At the State's discretion, be administered through—

(i) A single summative assessment; or

(ii) Multiple statewide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement and, at the State's discretion, student growth, consistent with paragraph (b)(4) of this section;

(11) Consistent with section 1111(b)(2)(B)(xi) and section 1111(h)(1)(C)(ii) of the Act, enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) Status as an English learner as defined in section 8101(20) of the Act;

(iv) Status as a migratory child as defined in section 1309(3) of title I, part C of the Act;

(v) Children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students;

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(vii) Status as a homeless child or youth as defined in section 725(2) of title VII, subtitle B of the McKinney-Vento Homeless Assistance Act, as amended;

(viii) Status as a child in foster care. "Foster care" means 24-hour substitute care for children placed away from their parents and for whom the agency under title IV–E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made; and

(ix) Status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty, where "armed forces," "active duty," and "full-time National Guard duty" have the same meanings given them in 10 U.S.C. 101(a)(4), 101(d)(1), and 101(d)(5);

(12) Produce individual student reports consistent with § 200.8(a); and

(13) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c)(1) At its discretion, a State may administer the assessments required under this section in the form of computer-adaptive assessments if such assessments meet the requirements of section 1111(b)(2)(J) of the Act and this section. A computer-adaptive assessment—

(i) Must measure a student's academic proficiency based on the challenging State academic standards for the grade in which the student is enrolled and growth toward those standards; and

(ii) May measure a student's academic proficiency and growth using items above or below the student's grade level.

(2) If a State administers a computer-adaptive assessment, the determination under paragraph (b)(3)(i)(B) of this section of a student's academic proficiency for the grade in which the

student is enrolled must be reported on all reports required by § 200.8 and section 1111(h) of the Act.

(d) A State must submit evidence for peer review under section 1111(a)(4) of the Act that its assessments under this section and §§ 200.3, 200.4, 200.5(b), 200.6(c), 200.6(f)(1) and (3), and 200.6(g) meet all applicable requirements.

(e) Information provided to parents under section 1111(b)(2) of the Act must—

(1) Be in an understandable and uniform format;

(2) Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(3) Be, upon request by a parent who is an individual with a disability as defined by the Americans with Disabilities Act (ADA), provided in an alternative format accessible to that parent.

(Authority: 10 U.S.C. 101(a)(4), (d)(1), and (d)(5); 20 U.S.C. 1003(24), 6311(a)(4), 6311(b)(2), and 6399(3); 42 U.S.C. 11434a, 12102; and 45 CFR 1355(a))

■ 3. Section 200.3 is revised to read as follows:

§ 200.3 Locally selected, nationally recognized high school academic assessments.

(a) *In general.* (1) A State, at the State's discretion, may permit an LEA to administer a nationally recognized high school academic assessment in each of reading/language arts, mathematics, or science, approved in accordance with paragraph (b) of this section, in lieu of the respective statewide assessment under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C) if such assessment meets all requirements of this section.

(2) An LEA must administer the same locally selected, nationally recognized academic assessment to all high school students in the LEA consistent with the requirements in § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), except for students with the most significant cognitive disabilities who are assessed on an alternate assessment aligned with alternate academic achievement standards, consistent with § 200.6(c).

(b) *State approval.* If a State chooses to allow an LEA to administer a nationally recognized high school academic assessment under paragraph (a) of this section, the State must—

(1) Establish and use technical criteria to determine if the assessment—

(i) Is aligned with the challenging State academic standards;

(ii) Addresses the depth and breadth of those standards;

(iii) Is equivalent to or more rigorous than the statewide assessments under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable, with respect to—

(A) The coverage of academic content;

(B) The difficulty of the assessment;

(C) The overall quality of the assessment; and

(D) Any other aspects of the assessment that the State may establish in its technical criteria;

(iv) Meets all requirements under § 200.2(b), except for § 200.2(b)(1), and ensures that all high school students in the LEA are assessed consistent with §§ 200.5(a) and 200.6; and

(v) Produces valid and reliable data on student academic achievement with respect to all high school students and each subgroup of high school students in the LEA that—

(A) Are comparable to student academic achievement data for all high school students and each subgroup of high school students produced by the statewide assessment;

(B) Are expressed in terms consistent with the State's academic achievement standards under section 1111(b)(1)(A) of the Act; and

(C) Provide unbiased, rational, and consistent differentiation among schools within the State for the purpose of the State-determined accountability system under section 1111(c) of the Act;

(2) Before approving any nationally recognized high school academic assessment for use by an LEA in the State—

(i) Ensure that the use of appropriate accommodations under § 200.6(b) and (f) does not deny a student with a disability or an English learner—

(A) The opportunity to participate in the assessment; and

(B) Any of the benefits from participation in the assessment that are afforded to students without disabilities or students who are not English learners; and

(ii) Submit evidence to the Secretary in accordance with the requirements for peer review under section 1111(a)(4) of the Act demonstrating that any such assessment meets the requirements of this section; and

(3) Approve an LEA's request to use a locally selected, nationally recognized high school academic assessment that meets the requirements of this section.

(c) *LEA applications.* (1) Before an LEA requests approval from the State to use a locally selected, nationally recognized high school academic assessment, the LEA must—

(i) Notify all parents of high school students it serves—

(A) That the LEA intends to request approval from the State to use a locally selected, nationally recognized high school academic assessment in place of the statewide academic assessment under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable;

(B) Of how parents may provide meaningful input regarding the LEA's request; and

(C) Of any effect of such request on the instructional program in the LEA; and

(ii) Provide an opportunity for meaningful consultation to all public charter schools whose students would be included in such assessments.

(2) As part of requesting approval to use a locally selected, nationally recognized high school academic assessment, an LEA must—

(i) Update its LEA plan under section 1112 or section 8305 of the Act, including to describe how the request was developed consistent with all requirements for consultation under sections 1112 and 8538 of the Act; and

(ii) If the LEA is a charter school under State law, provide an assurance that the use of the assessment is consistent with State charter school law and it has consulted with the authorized public chartering agency.

(3) Upon approval, the LEA must notify all parents of high school students it serves that the LEA received approval and will use such locally selected, nationally recognized high school academic assessment instead of the statewide academic assessment under § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable.

(4) In each subsequent year following approval in which the LEA elects to administer a locally selected, nationally recognized high school academic assessment, the LEA must notify—

(i) The State of its intention to continue administering such assessment; and

(ii) Parents of which assessment the LEA will administer to students to meet the requirements of § 200.5(a)(1)(i)(B) and (a)(1)(ii)(C), as applicable, at the beginning of the school year.

(5) The notices to parents under this paragraph (c) must be consistent with § 200.2(e).

(d) *Definition.* "Nationally recognized high school academic assessment" means an assessment of high school students' knowledge and skills that is administered in multiple States and is recognized by institutions of higher education in those or other States for the purposes of entrance or placement into courses in postsecondary education or training programs.

(Authority: 20 U.S.C. 6311(b)(2)(H), 6312(a), 7483, 7918; 29 U.S.C. 794; 42 U.S.C. 2000d–1, 12132)

■ 4. Section 200.4 is amended:

■ a. In paragraph (b)(2)(ii)(B), by removing the term "section 1111(b)(2)(C)(v)" and adding in its place the term "section 1111(c)(2)".

■ b. In paragraph (b)(2)(ii)(C), by removing the words "LEAs and".

■ c. In paragraph (b)(3), by removing the words "determine whether the State has made adequate yearly progress" and adding in their place the words "make accountability determinations under section 1111(c) of the Act".

■ d. By revising the authority citation at the end of the section.

The revision reads as follows:

§ 200.4 State law exception.

* * * * *

(Authority: 20 U.S.C. 6311(b)(2)(E))

■ 5. Section 200.5 is revised to read as follows:

§ 200.5 Assessment administration.

(a) *Frequency.* (1) A State must administer the assessments required under § 200.2 annually as follows:

(i) With respect to both the reading/language arts and mathematics assessments—

(A) In each of grades 3 through 8; and

(B) At least once in grades 9 through 12.

(ii) With respect to science assessments, not less than one time during each of—

(A) Grades 3 through 5;

(B) Grades 6 through 9; and

(C) Grades 10 through 12.

(2) With respect to any other subject chosen by a State, the State may administer the assessments at its discretion.

(b) *Middle school mathematics exception.* A State that administers an end-of-course mathematics assessment to meet the requirements under paragraph (a)(1)(i)(B) of this section may exempt an eighth-grade student from the mathematics assessment typically administered in eighth grade under paragraph (a)(1)(i)(A) of this section if—

(1) The student instead takes the end-of-course mathematics assessment the State administers to high school students under paragraph (a)(1)(i)(B) of this section;

(2) The student's performance on the high school assessment is used in the year in which the student takes the assessment for purposes of measuring academic achievement under section 1111(c)(4)(B)(i) of the Act and participation in assessments under section 1111(c)(4)(E) of the Act;

(3) In high school—

(i) The student takes a State-administered end-of-course assessment or nationally recognized high school academic assessment as defined in § 200.3(d) in mathematics that—

(A) Is more advanced than the assessment the State administers under paragraph (a)(1)(i)(B) of this section; and

(B) Provides for appropriate accommodations consistent with § 200.6; and

(ii) The student's performance on the more advanced mathematics assessment is used for purposes of measuring academic achievement under section 1111(c)(4)(B)(i) of the Act and participation in assessments under section 1111(c)(4)(E) of the Act; and

(4) The State describes in its State plan, with regard to this exception, its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school.

(Authority: 20 U.S.C. 6311(b)(2)(B)(v) and (b)(2)(C))

■ 6. Section 200.6 is revised to read as follows:

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed under § 200.5(a) in accordance with this section.

(a) *Students with disabilities in general.* (1) A State must include students with disabilities in all assessments under section 1111(b)(2) of the Act, with appropriate accommodations consistent with paragraphs (b), (f)(1), and (f)(3)(iv) of this section. For purposes of this section, students with disabilities, collectively, are—

(i) All children with disabilities as defined under section 602(3) of the IDEA;

(ii) Students with the most significant cognitive disabilities who are identified from among the students in paragraph (a)(1)(i) of this section; and

(iii) Students with disabilities covered under other acts, including—

(A) Section 504 of the Rehabilitation Act of 1973, as amended; and

(B) Title II of the ADA.

(2)(i) A student with a disability under paragraph (a)(1)(i) or (iii) of this section must be assessed with an assessment aligned with the challenging State academic standards for the grade in which the student is enrolled.

(ii) If a State has adopted alternate academic achievement standards permitted under section 1111(b)(1)(E) of the Act for students with the most significant cognitive disabilities, a student with the most significant cognitive disabilities under paragraph (a)(1)(ii) of this section may be assessed with—

(A) The general assessment under paragraph (a)(2)(i) of this section; or

(B) An alternate assessment under paragraph (c) of this section aligned with the challenging State academic content standards for the grade in which the student is enrolled and the State's alternate academic achievement standards.

(b) *Appropriate accommodations.* (1) A State's academic assessment system must provide, for each student with a disability under paragraph (a) of this section, the appropriate accommodations, such as interoperability with, and ability to use, assistive technology devices consistent with nationally recognized accessibility standards, that are necessary to measure the academic achievement of the student consistent with paragraph (a)(2) of this section, as determined by—

(i) For each student under paragraph (a)(1)(i) and (ii) of this section, the student's IEP team;

(ii) For each student under paragraph (a)(1)(iii)(A) of this section, the student's placement team; or

(iii) For each student under paragraph (a)(1)(iii)(B) of this section, the individual or team designated by the LEA to make these decisions.

(2) A State must—

(i) Develop, disseminate information to, at a minimum, schools and parents, and promote the use of appropriate accommodations to ensure that all students with disabilities are able to participate in academic instruction and assessments consistent with paragraph (a)(2) of this section; and

(ii) Ensure that general and special education teachers, paraprofessionals, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments under paragraphs (c) and (f)(3)(v) of this section, and know how to make use of appropriate accommodations during assessment for all students with disabilities.

(3) A State must ensure that the use of appropriate accommodations under this paragraph (b) does not deny a student with a disability—

(i) The opportunity to participate in the assessment; and

(ii) Any of the benefits from participation in the assessment that are afforded to students without disabilities.

(c) *Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities.* (1) If a

State has adopted alternate academic achievement standards permitted under section 1111(b)(1)(E) of the Act for students with the most significant cognitive disabilities, the State must measure the achievement of those students with an alternate assessment that—

(i) Is aligned with the challenging State academic content standards under section 1111(b)(1) of the Act for the grade in which the student is enrolled;

(ii) Yields results for those students relative to the alternate academic achievement standards; and

(iii) At the State's discretion, provides valid and reliable measures of student growth at all alternate academic achievement levels to help ensure that the assessment results can be used to improve student instruction.

(2) For each subject for which assessments are administered under § 200.2(a)(1), the total number of students assessed in that subject using an alternate assessment aligned with alternate academic achievement standards under paragraph (c)(1) of this section may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

(3) A State must—

(i) Not prohibit an LEA from assessing more than 1.0 percent of its assessed students in a given subject with an alternate assessment aligned with alternate academic achievement standards;

(ii) Require that an LEA submit information justifying the need of an LEA to assess more than 1.0 percent of its assessed students in an assessed subject with such an alternate assessment;

(iii) Provide appropriate oversight, as determined by the State, of an LEA that is required to submit information to the State; and

(iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

(4) If a State anticipates that it will exceed the cap under paragraph (c)(2) of this section with respect to any subject for which assessments are administered under § 200.2(a)(1) in any school year, the State may request that the Secretary waive the cap for the relevant subject, pursuant to section 8401 of the Act, for one year. Such request must—

(i) Be submitted at least 90 days prior to the start of the State's first testing window;

(ii) Provide State-level data, from the current or previous school year, to show—

(A) The number and percentage of students in each subgroup of students defined in section 1111(c)(2)(A), (B), and (D) of the Act who took the alternate assessment aligned with alternate academic achievement standards; and

(B) The State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the Act who are enrolled in grades for which the assessment is required under § 200.5(a);

(iii) Include assurances from the State that it has verified that each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards, and any other LEA that the State determines will significantly contribute to the State's exceeding the cap under paragraph (c)(2) of this section—

(A) Followed each of the State's guidelines under paragraph (d) of this section, including criteria in paragraph (d)(1)(i) through (iii) except paragraph (d)(6);

(B) Will not significantly increase, from the prior year, the extent to which the LEA assessed more than 1.0 percent of students in any subject for which assessments were administered under § 200.2(a)(1) in that school year using an alternate assessment aligned with alternate academic achievement standards unless the LEA has demonstrated to the State a higher prevalence of students with the most significant cognitive disabilities than were enrolled in assessed grades in the prior year; and

(C) Will address any disproportionality in the number and percentage of students in any particular subgroup under section 1111(c)(2)(A), (B), or (D) of the Act taking an alternate assessment aligned with alternate academic achievement standards;

(iv) Include a plan and timeline by which—

(A) The State will improve the implementation of its guidelines under paragraph (d) of this section, including by reviewing and, if necessary, revising its definition under paragraph (d)(1) of this section, so that the State meets the cap in paragraph (c)(2) of this section in each subject for which assessments are administered under § 200.2(a)(1) in future school years;

(B) The State will take additional steps to support and provide appropriate oversight to each LEA that the State anticipates will assess more than 1.0 percent of its assessed students in a subject in a school year using an alternate assessment aligned with alternate academic achievement standards, and any other LEA that the State determines will significantly contribute to the State's exceeding the cap under paragraph (c)(2) of this section, to ensure that only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards. The State must describe how it will monitor and regularly evaluate each such LEA to ensure that the LEA provides sufficient training such that school staff who participate as members of an IEP team or other placement team understand and implement the guidelines established by the State under paragraph (d) of this section so that all students are appropriately assessed; and

(C) The State will address any disproportionality in the number and percentage of students taking an alternate assessment aligned with alternate academic achievement standards as identified through the data provided in accordance with paragraph (c)(4)(ii)(A) of this section; and

(v) If the State is requesting to extend a waiver for an additional year, meet the requirements in paragraph (c)(4)(i) through (iv) and demonstrate substantial progress towards achieving each component of the prior year's plan and timeline required under paragraph (c)(4)(iv) of this section.

(5) A State must report separately to the Secretary, under section 1111(h)(5) of the Act, the number and percentage of children with disabilities under paragraph (a)(1)(i) and (ii) of this section taking—

(i) General assessments described in § 200.2;

(ii) General assessments with accommodations; and

(iii) Alternate assessments aligned with alternate academic achievement standards under this paragraph (c).

(6) A State may not develop, or implement for use under this part, any alternate or modified academic achievement standards that are not alternate academic achievement standards for students with the most significant cognitive disabilities that meet the requirements of section 1111(b)(1)(E) of the Act.

(7) For students with the most significant cognitive disabilities, a computer-adaptive alternate assessment aligned with alternate academic achievement standards must—

(i) Assess a student's academic achievement based on the challenging

State academic content standards for the grade in which the student is enrolled;

(ii) Meet the requirements for alternate assessments aligned with alternate academic achievement standards under this paragraph (c); and

(iii) Meet the requirements in § 200.2, except that the alternate assessment need not measure a student's academic proficiency based on the challenging State academic achievement standards for the grade in which the student is enrolled and growth toward those standards.

(d) *State guidelines.* If a State adopts alternate academic achievement standards for students with the most significant cognitive disabilities and administers an alternate assessment aligned with those standards, the State must—

(1) Establish, consistent with section 612(a)(16)(C) of the IDEA, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards. Such guidelines must include a State definition of "students with the most significant cognitive disabilities" that would address factors related to cognitive functioning and adaptive behavior, such that—

(i) The identification of a student as having a particular disability as defined in the IDEA must not determine whether a student is a student with the most significant cognitive disabilities;

(ii) A student with the most significant cognitive disabilities must not be identified solely on the basis of the student's previous low academic achievement, or status as an English learner, or the student's previous need for accommodations to participate in general State or districtwide assessments; and

(iii) Students with the most significant cognitive disabilities require extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging State academic content standards for the grade in which the student is enrolled;

(2) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of State and local policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(3) Ensure that parents of students selected to be assessed using an alternate assessment aligned with alternate academic achievement standards under the State's guidelines in this paragraph (d) are informed that their child's achievement will be measured based on alternate academic achievement standards, and how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma consistent with § 200.2(e);

(4) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment aligned with alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma;

(5) Promote, consistent with requirements under the IDEA, the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;

(6) Ensure that it describes in its State plan the steps it has taken to incorporate the principles of universal design for learning, to the extent feasible, in any alternate assessments aligned with alternate academic achievement standards that the State administers; and

(7) Develop, disseminate information on, and promote the use of appropriate accommodations consistent with paragraph (b) of this section to ensure that a student with significant cognitive disabilities who does not meet the criteria in paragraph (a)(1)(ii) of this section—

(i) Participates in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Is tested based on challenging State academic standards for the grade level in which the student is enrolled.

(e) *Definitions related to students with disabilities.* Consistent with 34 CFR 300.5, "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(f) *English learners.* A State must include English learners in its academic assessments required under § 200.2 as follows:

(1) *In general.* (i) Consistent with § 200.2 and paragraph (f)(2) and (f)(4) of this section, a State must assess English learners in a valid and reliable manner that includes—

(A) Appropriate accommodations with respect to a student's status as an English learner and, if applicable, the student's status under paragraph (a) of this section; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in academic content areas until the students have achieved English language proficiency.

(ii) To meet the requirements under paragraph (f)(1)(i) of this section, the State must, in its State plan—

(A) Ensure that the use of appropriate accommodations under this paragraph (f) and, if applicable, under paragraph (b) of this section does not deny an English learner—

(*1*) The opportunity to participate in the assessment; and

(*2*) Any of the benefits from participation in the assessment that are afforded to students who are not English learners;

(B) Provide its definition for "languages other than English that are present to a significant extent in the participating student population," consistent with paragraph (f)(1)(iv) of this section, and identify the specific languages that meet that definition;

(C) Identify any existing assessments in languages other than English, and specify for which grades and content areas those assessments are available;

(D) Indicate the languages other than English that are present to a significant extent in the participating student population, as defined by the State, for which yearly student academic assessments are not available and are needed; and

(E) Describe how it will make every effort to develop assessments, at a minimum, in languages other than English that are present to a significant extent in the participating student population including by providing—

(*1*) The State's plan and timeline for developing such assessments, including a description of how it met the requirements of paragraph (f)(1)(iv) of this section;

(*2*) A description of the process the State used to gather meaningful input on assessments in languages other than English, collect and respond to public comment, and consult with educators, parents and families of English learners, and other stakeholders; and

(*3*) As applicable, an explanation of the reasons the State has not been able to complete the development of such assessments despite making every effort.

(iii) A State may request assistance from the Secretary in identifying linguistically accessible academic assessments that are needed.

(iv) In determining which languages other than English are present to a significant extent in a State's participating student population, a State must, at a minimum—

(A) Ensure that its definition of "languages other than English that are present to a significant extent in the participating student population" encompasses at least the most populous language other than English spoken by the State's participating student population;

(B) Consider languages other than English that are spoken by distinct populations of English learners, including English learners who are migratory, English learners who were not born in the United States, and English learners who are Native Americans; and

(C) Consider languages other than English that are spoken by a significant portion of the participating student population in one or more of a State's LEAs as well as languages spoken by a significant portion of the participating student population across grade levels.

(2) *Assessing reading/language arts in English.* (i) A State must assess, using assessments written in English, the achievement of an English learner in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico and, if applicable, students in Native American language schools or programs consistent with paragraph (g) of this section, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess an English learner under paragraph (f)(1)(i)(B) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (f)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for English learners.

(3) *Assessing English proficiency.* (i) Each State must—

(A) Develop a uniform statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills; and

(B) Require each LEA to use such assessment to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in schools served by the LEA.

(ii) The assessment under paragraph (3)(i) of this section must be—

(A) Aligned with the State's English language proficiency standards under section 1111(b)(1)(F) of the Act and provide coherent and timely information about each student's attainment of those standards, including information provided to parents consistent with § 200.2(e); and

(B) Developed and used consistent with the requirements of § 200.2(b)(2), (b)(4), and (b)(5).

(iii) If a State develops a computer-adaptive assessment to measure English language proficiency, the State must ensure that the computer-adaptive assessment—

(A) Assesses a student's language proficiency, which may include growth toward proficiency, in order to measure the student's acquisition of English; and

(B) Meets the requirements for English language proficiency assessments in paragraph (f) of this section.

(iv) A State must provide appropriate accommodations that are necessary to measure a student's English language proficiency relative to the State's English language proficiency standards under section 1111(b)(1)(F) of the Act for each English learner covered under paragraph (a)(1)(i) or (iii) of this section.

(v) A State must provide for an alternate English language proficiency assessment for each English learner covered under paragraph (a)(1)(ii) of this section who cannot participate in the assessment under paragraph (f)(3)(i) of this section even with appropriate accommodations.

(4) *Recently arrived English learners.* (i)(A) A State may exempt a recently arrived English learner, as defined in paragraph (f)(5)(i) of this section, from one administration of the State's reading/language arts assessment under § 200.2.

(B) If the State does not assess a recently arrived English learner on the State's reading/language arts assessment, the State must count the year in which the assessment would have been administered as the first of the three years in which the student may take the State's reading/language arts assessment in a native language consistent with paragraph (f)(2)(i) of this section.

(C) The State and its LEAs must report on State and local report cards required under section 1111(h) of the Act the number of recently arrived English learners who are not assessed on the State's reading/language arts assessment.

(D) Nothing in this paragraph (f) relieves an LEA from its responsibility under applicable law to provide recently arrived English learners with appropriate instruction to enable them to attain English language proficiency as well as grade-level content knowledge in reading/language arts, mathematics, and science.

(ii) A State must assess the English language proficiency of a recently arrived English learner pursuant to paragraph (f)(3) of this section.

(iii) A State must assess the mathematics and science achievement of a recently arrived English learner pursuant to § 200.2 with the frequency described in § 200.5(a).

(5) *Definitions related to English learners.* (i) A "recently arrived English learner" is an English learner who has been enrolled in schools in the United States for less than twelve months.

(ii) The phrase "schools in the United States" includes only schools in the 50 States and the District of Columbia.

(g) *Students in Native American language schools or programs.* (1) Except as provided in paragraph (g)(2) of this section, a State is not required to assess, using assessments written in English, student achievement in meeting the challenging State academic standards in reading/language arts for a student who is enrolled in a school or program that provides instruction primarily in a Native American language if—

(i) The State provides an assessment of reading/language arts in the Native American language to all students in the school or program, consistent with the requirements of § 200.2;

(ii) The State submits the assessment of reading/language arts in the Native American language for peer review as part of its State assessment system, consistent with § 200.2(d); and

(iii) For an English learner, as defined in section 8101(2)(C)(ii) of the Act, the State continues to assess the English language proficiency of such English learner, using the annual English language proficiency assessment required under § 200.6(f)(3), and provides appropriate services to enable him or her to attain proficiency in English.

(2) Notwithstanding § 200.6(f)(2), the State must assess under § 200.5(a)(1)(i)(A), using assessments written in English by no later than the

end of the eighth grade, the achievement of each student enrolled in such a school or program in meeting the challenging State academic standards in reading/language arts.

(h) *Definition.* For the purpose of this section, "Native American" means "Indian" as defined in section 6151 of the Act, which includes Alaska Native and members of federally recognized or state-recognized tribes; Native Hawaiian; and Native American Pacific Islander.

(i) *Highly mobile students.* The State must include in its assessment system the following highly mobile student populations as defined in § 200.2(b)(11):

(1) Students with status as a migratory child.

(2) Students with status as a homeless child or youth.

(3) Students with status as a child in foster care.

(4) Students with status as a student with a parent who is a member of the armed forces on active duty.

(Authority: 20 U.S.C. 1400 *et seq.* and 6311(b)(2); 25 U.S.C. 2902; 29 U.S.C. 794; 42 U.S.C. 2000d–1, 11434a, and 12132; 34 CFR 300.5)

■ 7. Section 200.8 is amended:
■ a. In paragraph (a)(2)(i), by adding the word "and" following the semicolon.
■ b. In paragraph (a)(2)(ii), by removing the words "including an alternative format (*e.g.,* Braille or large print) upon request; and" and adding in their place the words "consistent with § 200.2."
■ c. By removing paragraph (a)(2)(iii).
■ d. In paragraph (b)(1), by removing the term "§ 200.2(b)(4)" and adding in its place the term "§ 200.2(b)(13)".
■ e. By revising the authority citation at the end of the section.

The revision reads as follows:

§ 200.8 Assessment reports.

* * * * *

(Authority: 20 U.S.C. 6311(b)(2)(B)(x) and (xii))

■ 8. Section 200.9 is amended:
■ a. By revising paragraph (a).
■ b. In paragraph (b), by removing the term "section 6113(a)(2)" and adding in its place the term "section 1002(b)".
■ c. By revising the authority citation at the end of the section.

The revisions read as follows:

§ 200.9 Deferral of assessments.

(a) A State may defer the start or suspend the administration of the assessments required under § 200.2 for one year for each year for which the amount appropriated for State assessment grants under section 1002(b) of the Act is less than $369,100,000.

* * * * *

(Authority: 20 U.S.C. 6302(b), 6311(b)(2)(I), 6363(a))

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Part III

Department of Education

34 CFR Part 200
Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Innovative Assessment Demonstration Authority; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB31

[Docket ID ED–2016–OESE–0047]

Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Innovative Assessment Demonstration Authority

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes new regulations under title I, part B of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes made to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015, including the ability of the Secretary to provide demonstration authority to a State educational agency (SEA) to pilot an innovative assessment and use it for accountability and reporting purposes under title I, part A of the ESEA before scaling such an assessment statewide.

DATES: We must receive your comments on or before September 9, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use *Regulations.gov.*"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Jessica McKinney, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W107, Washington, DC 20202–2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jessica McKinney, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W107, Washington, DC 20202–2800. Telephone: (202) 401–1960 or by email: *Jessica.McKinney@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. Through the reauthorization, the ESSA made significant changes to the ESEA for the first time since the ESEA was reauthorized through the No Child Left Behind Act of 2001 (NCLB), including significant changes to title I. In particular, the ESSA includes in title I, part B of the ESEA a new demonstration authority under which an SEA or consortium of SEAs that meets certain application requirements may establish, operate, and evaluate an innovative assessment, including for use in the State accountability system, with the goal of using the innovative assessment after the demonstration authority ends to meet the academic assessment and statewide accountability system requirements under title I, part A of the ESEA. An SEA would require this demonstration authority under title I, part B, if the SEA is proposing to implement an innovative assessment initially in only a subset of its LEAs without also continuing administration of its current statewide assessment to all students in those LEAs for school accountability and reporting purposes. We propose these regulations to provide clarity to SEAs regarding the requirements for applying for and implementing innovative assessment demonstration authority. These regulations will also help to ensure that SEAs provided this authority can develop and administer high-quality, valid, and reliable assessments that measure student mastery of challenging State academic standards, improve the design and delivery of large-scale assessments, and better inform classroom instruction, ultimately leading to improved academic outcomes for all students.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would support implementation of provisions in section 1204 of title I, part B of the ESEA, as amended by the ESSA, that permit the Secretary to provide innovative assessment demonstration authority to an SEA or consortium of SEAs, including by:

- Establishing requirements for applications for the demonstration authority and selection criteria for evaluating those applications through a peer-review process;
- Establishing requirements for the transition, at the conclusion of an SEA's or consortium's demonstration authority period, to statewide use of the innovative assessment for the purposes of academic assessments and the statewide accountability system under section 1111; and
- Establishing parameters for withdrawing an SEA's or consortium's demonstration authority if the SEA or consortium does not meet certain requirements.

Please refer to the *Significant Proposed Regulations* section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

Costs and Benefits: We believe that the benefits of this regulatory action outweigh any associated costs to a participating SEA, which may be supported with Federal grant funds. These benefits include the administration of assessments that may measure student mastery of State academic content standards more effectively than current State assessments and better inform classroom instruction and student supports, ultimately leading to improved academic outcomes for all students. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov.* You may also inspect the comments in person in Room 3W107, 400 Maryland Ave. SW., Washington, DC, between 9:00 a.m. and 4:30 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Particular Issue for Comment: We request comments from the public on any issues related to these proposed regulations. However, we particularly request the public to comment on, and provide additional information regarding, the following issue. Please provide a detailed rationale for any response you make.

- Whether the suggested options to support SEAs or consortia of SEAs in evaluating their innovative assessment system will be effective and appropriate for determining that the innovative assessment generates results that are comparable for all students and for each subgroup of students as compared to the results for such students on the State assessments; whether any additional options should be considered; and which options, if any, should not be included or should be modified. (See proposed § 200.77.)

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. Through the reauthorization, the ESSA made significant changes to the ESEA, including in title I, part B, permitting a new innovative assessment demonstration authority. This authority is aligned with the principles of President Obama's testing action plan, which seeks to ensure that assessments are high-quality, worth taking, and time-limited.[1] Under this authority, an SEA or consortium of SEAs that meets certain application requirements may establish, operate, and evaluate an innovative assessment system, and use the innovative assessment system for purposes of school accountability and reporting in its local educational agencies (LEAs), or a subset of its LEAs or schools, instead of the applicable statewide assessment. SEAs already have flexibility to innovate their statewide assessment systems under title I, part A without using this demonstration authority—for example, by adopting computer-adaptive testing, breaking up a single summative assessment into interim or modular assessments, or adopting innovative item types. An SEA requires this authority under title I, part B only if the SEA is proposing to implement an innovative assessment initially in a subset of its LEAs without also continuing administration of its current statewide assessment to all students in those LEAs for school accountability and reporting purposes.

An SEA may propose an innovative assessment system that includes academic content assessments in all of the required grades and subjects under section 1111(b)(2)(B) of the ESEA, as amended by the ESSA, or a system that includes a subset of those grades or subjects. For example, an SEA could administer an innovative assessment only in high school mathematics and reading/language arts, in science within each grade span, or in mathematics in grades 3–5, so long as the SEA maintained its statewide assessments in any required grade or subject in which an innovative assessment would not be administered. An SEA or consortium may implement the demonstration authority for up to five years (and may request to extend this authority for an additional two years if needed), with the goal of using the innovative assessment statewide after the demonstration authority period to meet the academic assessment and accountability requirements under title I, part A of the ESEA. We propose these regulations to provide clarity to SEAs regarding the requirements for applying for and implementing the innovative assessment demonstration authority. The proposed regulations are further described under the *Significant Proposed Regulations* section of this NPRM.

Public Participation

On December 22, 2015, the Department published a request for information in the **Federal Register** soliciting advice and recommendations from the public on the implementation of title I of the ESEA, as amended by the ESSA. We received 369 comments. We also held two public meetings with stakeholders—one on January 11, 2016, in Washington, DC, and one on January 19, 2016, in Los Angeles, California—at which we heard from over 100 speakers regarding the development of regulations, guidance, and technical assistance. In addition, Department staff have held more than 200 meetings with education stakeholders and leaders across the country to hear about areas of interest and concern regarding implementation of the new law.

Significant Proposed Regulations

The Secretary proposes new regulations in 34 CFR part 200 to implement the innovative assessment demonstration authority under section 1204 of title I, part B of the ESEA, as amended by the ESSA. We discuss substantive issues under the sections of the proposed regulations to which they pertain.

Section 200.76 Innovative Assessment Demonstration Authority

Statute: Under section 1204 of the ESEA, as amended by the ESSA, the Secretary may provide an SEA or consortium of SEAs with authority to establish an innovative assessment system (referred to as "demonstration authority") if the SEA or consortium meets certain application requirements. Section 1204(f) requires the Secretary to implement a peer review process to inform the awarding of demonstration authority. Section 1204(b) specifies that the Secretary may provide demonstration authority for a period not to exceed five years and that, during the first three years in which the Secretary provides demonstration authority (referred to as the "initial demonstration period"), no more than seven SEAs may participate (including those participating in a consortium), and a consortium may include no more than four SEAs.

Section 1204(a) provides examples of the types of assessments that may be part of an innovative assessment system including: (1) Competency-based assessments, instructionally embedded assessments, interim assessments, cumulative year-end assessments, or performance-based assessments that combine into an annual summative determination for a student, which may be administered through computer-adaptive assessments; and (2) assessments that validate when students are ready to demonstrate mastery or proficiency and allow for differentiated student support based on individual learning needs.

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[1] U.S. Department of Education (2015). Fact Sheet: Testing Action Plan [Press release]. Retrieved from *http://www.ed.gov/news/press-releases/fact-sheet-testing-action-plan.*

Current Regulations: None.

Proposed Regulations: Proposed § 200.76 would establish general requirements that SEAs and consortia of SEAs must meet when applying for, and implementing, the innovative assessment demonstration authority in the ESEA, as amended by the ESSA, including definitions and a requirement that applications from SEAs and consortia of SEAs be peer reviewed based on the proposed requirements and selection criteria established in subsequent sections of the proposed regulations. Proposed § 200.76(b) would define key terms used in subsequent sections of the proposed regulations, including "demonstration authority period" and "innovative assessment system." Proposed § 200.76(c) would clarify the process by which the Secretary may assign values to each proposed selection criterion and factors under a criterion, and proposed § 200.76(d) would clarify limitations on participation during the initial demonstration period, including clarifications related to consortia of SEAs that have affiliate members not yet implementing the innovative assessment system.

Reasons: Title I, part B of the ESEA, as amended by the ESSA, includes a new innovative assessment demonstration authority under which an SEA or consortium of SEAs may apply to the Secretary to establish, operate, and evaluate an innovative assessment system, and use such an assessment instead of, or in addition to, its statewide assessments for purposes of school accountability and reporting. An SEA may initially administer its innovative assessment in a subset of schools or LEAs. However, the goal of the demonstration authority period is to provide an SEA with the time to implement, improve, and evaluate the technical quality of its innovative assessment to determine whether it should be continued, taken to scale, and administered statewide, and whether it can be used to meet the statewide academic assessment and accountability requirements under title I, part A of the ESEA, as amended by the ESSA, at the end of the demonstration authority period. The demonstration authority period is capped at five years, although an SEA may request an extension of no more than two years if it needs additional time to scale its system to operate statewide and receive approval to use its system for purposes of title I, part A of the ESEA.

We believe the proposed regulations are critical to provide clarity for SEAs interested in applying for the demonstration authority. First, proposed § 200.76 would help SEAs understand the purpose and goal of the demonstration authority by defining key terms and timelines. By defining the "demonstration authority period" for an individual SEA or consortium of SEAs, the proposed regulations would clarify that the SEA must be ready to implement an operational innovative assessment in at least some LEAs at the time of its application and that the period cannot be used solely for planning. The SEA must also be ready to use such an assessment for purposes of accountability and reporting student achievement during each year of its demonstration authority period.

We recognize that many SEAs will need time to plan, develop or procure, pilot, and field test components of an innovative assessment prior to operation. An SEA does not need demonstration authority to plan for or develop an innovative assessment, or to administer such an assessment in schools or LEAs alongside current statewide assessments, or in place of required LEA assessments. Only SEAs that are ready to administer an innovative assessment, in at least some schools or LEAs, in place of the statewide assessment require authority. For these reasons, we intend to work with external partners and organizations to assist interested SEAs in planning for innovative assessment demonstration authority and understanding the application process and purpose and opportunity for innovation within the authority. Specifically, the Department intends to offer SEAs that are not yet ready to implement an innovative assessment under the demonstration authority, including SEAs that are affiliate members of consortia, the opportunity to receive technical assistance focused on innovative assessments, such as by participating in a community of practice. SEAs will have an opportunity to receive support and learn from experts in assessment and accountability system design as they plan their systems. These innovative assessment technical assistance opportunities would create a space for SEAs to engage in thoughtful planning of their innovative assessment system, as well as share ideas and receive useful feedback—ultimately increasing the strength of future proposals and creating a cohort of additional SEAs that may be ready to implement the demonstration authority.

We also note that, under part A of title I of the ESEA, as amended by the ESSA, States have the flexibility to use computer-adaptive statewide assessments, to administer a single summative statewide assessment, or to offer multiple statewide interim assessments during the course of the academic year that result in a single summative score and provides valid, reliable, and transparent information on student achievement (*e.g.,* modular assessments). A State may administer and submit any of these assessments for Federal peer review of State assessment systems without seeking demonstration authority, because they are permitted under section 1111(b)(2) and are given statewide, rather than in a subset of LEAs initially. In other words, an SEA could use a peer-reviewed innovative assessment statewide without this authority. Similarly, an SEA could test an innovative assessment in some LEAs without this authority, so long as it continued to use the existing statewide assessment for accountability purposes in those LEAs. However, if an SEA desires to begin to use an innovative assessment system for accountability purposes under title I in a select handful of LEAs, while using the statewide assessment for those purposes in other LEAs—that is, if they wish to maintain two separate assessment systems for accountability for some temporary period of time—then demonstration authority is required.

Because the statute lists types of assessments, such as performance-based and interim assessments, that an SEA may use in its innovative assessment system, proposed § 200.76 would also define "innovative assessment system" to provide greater clarity that any innovative assessment design may be used under the demonstration authority, so long as it meets applicable requirements and produces an annual summative determination for each student of grade-level achievement aligned to the State's challenging academic standards under section 1111(b)(1), or, when a student is assessed with an alternate assessment aligned with alternate academic achievement standards, an annual summative determination for the student relative to such alternate academic achievement standards. This would promote flexibility and innovation in assessment design, while ensuring that students in schools participating in the authority would be held to the same high standards as other students in the State and that parents and educators receive the same vital information about student progress toward meeting those standards each year.

Finally, proposed § 200.76 would clarify the process for applying to the Secretary for the demonstration authority, including the statutory requirement that applications from an SEA or a consortium of SEAs be peer reviewed to inform the Secretary's decision to award an SEA with the authority. The proposed regulations would provide greater clarity by specifying that each applicant must address all of the requirements and selection criteria, described in proposed §§ 200.77 and 200.78, in its application. In particular, the peer review process would be designed to help the Secretary determine whether an applicant will be able to successfully meet the requirements of the demonstration authority based on the extent to which the applicant's plan sufficiently addresses the selection criteria. Such peer review panels would include experts in the design, development, and implementation of innovative assessment systems (including psychometricians, measurement experts, and researchers) and State and local practitioners with experience implementing such systems (such as State and local assessment directors and educators). Further, proposed § 200.76 would specify the process by which the Secretary informs applicants of the value assigned to each selection criterion or factor under a criterion. The proposed regulations do not assign values for particular selection criterion at this time, but, rather, help inform interested SEAs that these criteria will each be scored during the peer review process in a similar manner to how the Department uses selection criteria in other programs, as specified under 34 CFR 75.201. Taken together, these proposed regulations would help ensure that SEAs understand the expectations and terms of the demonstration authority and increase the likelihood that SEAs will submit applications that meet the requirements and fully address the selection criteria.

Sections 200.77 and 200.78 Demonstration Authority Application Requirements and Selection Criteria

Statute: Section 1204(e) of the ESEA, as amended by the ESSA, requires an SEA or consortium of SEAs seeking demonstration authority to submit an application to the Secretary. Specifically, section 1204(e) requires that an application include a description of the experience of the applicant in implementing any components of its innovative assessment system, the timeline over which it proposes to exercise demonstration authority, and a demonstration that the innovative assessment system will—

(1) Be developed in collaboration with stakeholders representing the interests of children with disabilities, English learners, and other historically underserved children; teachers, principals, and other school leaders; LEAs; parents; and civil rights organizations in the State;

(2) Meet all requirements of section 1111(b)(2)(B), excluding requirements that the assessments be the same assessments administered to all public school students in the State (if the system will be initially administered in a subset of LEAs) and be administered annually in grades 3–8 and at least once in grades 9–12 in reading/language arts and mathematics and at least once in each of grades 3–5, 6–9, and 10–12 in science;

(3) Be aligned to the challenging State academic content standards under section 1111(b)(1) and address the depth and breadth of those standards;

(4) Express student results or student competencies in terms consistent with the State's aligned academic achievement standards under section 1111(b)(1);

(5) Generate results that are valid, reliable, and comparable for all students and for each subgroup of students in section 1111(b)(2)(B)(xi) as compared to the results for such students on the statewide academic assessments under section 1111(b)(2);

(6) Be accessible to all students, such as by incorporating the principles of universal design for learning;

(7) Provide teachers, principals, other school leaders, students, and parents with timely data, disaggregated by each subgroup of students described in section 1111(b)(2)(B)(xi), to inform and improve instructional practice and student supports;

(8) Identify which students are not making progress toward meeting the challenging State academic standards so that teachers can provide instructional support and targeted interventions to all students;

(9) Annually measure the progress of not less than the same percentage of students overall and in each of the subgroups of students in section 1111(c)(2), as measured under section 1111(c)(4)(E), as were assessed under the statewide academic assessments required by section 1111(b)(2);

(10) Generate an annual, summative achievement determination, based on the aligned State academic achievement standards under section 1111(b)(1) and based on annual data, for each individual student; and

(11) Allow the SEA to validly and reliably aggregate data from the innovative assessment system for purposes of accountability, consistent with the requirements of section 1111(c), and reporting, consistent with the requirements of section 1111(h).

In addition, section 1204(e) requires an application that includes a description of how an SEA will—

(1) Continue use of the statewide academic assessments required under section 1111(b)(2) if those assessments will be used for accountability purposes for the duration of the demonstration authority period;

(2) Ensure that students with the most significant cognitive disabilities may be assessed with alternate assessments consistent with section 1111(b)(2)(D);

(3) Inform parents of students in participating LEAs about the innovative assessment system at the beginning of each school year in which the system will be implemented;

(4) Report data from the system annually to the Secretary;

(5) Identify the distinct purposes for each assessment that is part of the system;

(6) Provide support and training to LEA and school staff to implement the system;

(7) Engage and support teachers in developing and scoring assessments that are part of the system, including through the use of high-quality professional development, standardized and calibrated scoring rubrics, and other strategies, consistent with relevant nationally recognized professional and technical standards, to ensure inter-rater reliability and comparability;

(8) Acclimate students to the system;

(9) If the SEA is proposing to administer the system initially in a subset of LEAs, scale the system to administer the system statewide or in additional LEAs;

(10) Gather data, solicit regular feedback from teachers, principals, other school leaders, and parents, and assess the results of each year of the demonstration authority, and respond by making needed changes;

(11) Ensure that all students and each of the subgroups of students in section 1111(c)(2) participating in the system receive the instructional support needed to meet the State's aligned academic achievement standards;

(12) Ensure that each LEA has the technological infrastructure to implement the system; and

(13) Hold all schools in participating LEAs accountable for meeting the

State's expectations for student achievement.

Finally, section 1204(e) requires an application from an SEA seeking to administer an innovative assessment system initially in a subset of LEAs to include—

(1) A description of the LEAs that will participate, including what criteria the SEA has for approving any additional LEAs to participate during the demonstration authority period;

(2) Assurances from participating LEAs that they will comply with the requirements of section 1204(e);

(3) A description of how the SEA will ensure that the inclusion of additional LEAs contributes to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs during the demonstration authority period and that the participating LEAs, as a group, will be demographically similar to the State as a whole by the end of the demonstration authority period; and

(4) A description of the SEA's plan to hold all students and each subgroup of students in section 1111(c)(2) to the same high standard as other students in the State.

Section 1204(f) requires the Secretary to implement a peer review process to inform the awarding of demonstration authority to applicants and determinations of whether an applicant's innovative assessment system meets requirements in addition to those listed in section 1204(e).

Specifically, the peer review must help inform the Secretary's determination as to whether the system—

(1) Is comparable to the State academic assessments under section 1111(b)(2);

(2) Is valid, reliable, of high technical quality, and consistent with relevant, nationally recognized professional and technical standards; and

(3) Provides an unbiased, rational, and consistent determination of progress toward the long-term goals described under section 1111(c)(4)(A)(i) for the academic achievement of all students based on academic assessments.

Section 1204(l) specifies that each State member of a consortium seeking demonstration authority must meet all applicable requirements. Section 1204(c) and 1204(m) describes the role of the Institute for Education Sciences in producing a progress report on implementation of the authority during the initial demonstration period, as well as disseminating regular information and best practices to the field on innovative assessments after the initial demonstration period concludes.

Current Regulations: None.

Proposed Regulations: Proposed § 200.77 would clarify the requirements that an SEA or consortium of SEAs must meet in its application in order to be approved to implement the demonstration authority. The SEA or consortium would be required to submit to the Secretary an application that addresses three areas: Consultation, as described in proposed § 200.77(a); innovative assessment systems, as described in proposed § 200.77(b); selection criteria, as described in proposed § 200.78; and assurances, as described in proposed § 200.77(d). In addition, proposed § 200.77(e) would clarify certain application requirements that apply to an SEA or consortium seeking to implement demonstration authority initially in a subset of schools or LEAs, and proposed § 200.77(f) would clarify application requirements that apply specifically to a consortium.

Consultation

Proposed § 200.77(a) would require an SEA or consortium to provide evidence that it developed the innovative assessment system in collaboration with partners, including (1) experts in the planning, development, implementation, and evaluation of innovative assessments and (2) affected stakeholders, including those representing the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the ESEA; teachers, principals, and other school leaders; LEAs; students and parents; and civil rights organizations.

Innovative Assessment System Requirements

Proposed § 200.77(b) would clarify requirements for an innovative assessment system by requiring a demonstration from each SEA or consortium describing how its system does or will:

- Meet all requirements under section 1111(b)(2)(B), with two exceptions. First, innovative assessments would not need to be the same assessments administered to all public school students in the State during the demonstration authority period, if the innovative assessment will be administered initially in a subset of schools or LEAs, provided that non-participating schools continue to administer the statewide academic assessments under section 1111(b)(2). Second, innovative assessments would not need to be administered annually in grades 3–8 and at least once in grades 9–12 (in the case of reading/language arts and mathematics assessments) and at least once in grades 3–5, 6–9, and 10–12 (in the case of science assessments), so long as the statewide academic assessments under section 1111(b)(2) are administered in each required grade and subject in which the SEA does not implement an innovative assessment.
- Align with the State academic content standards under section 1111(b)(1), including their full depth and breadth.
- Express individual student results or competencies in terms consistent with the State academic achievement standards under section 1111(b)(1), and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards.
- Provide for comparability to the State academic assessments under section 1111(b)(2) and generate results that are valid, reliable, and comparable for all students and for each subgroup of students under section 1111(b)(2)(B)(xi), as compared to the results for such students on the State assessments. Consistent with the selection criterion for evaluation and continuous improvement described in proposed § 200.78(e), an SEA would be required to submit a plan to annually determine comparability to the State assessments using one of several specified methods, which include assessing all students using an existing State assessment at least once in each grade span for which there is an innovative assessment; assessing a representative sample of students in the same school year on both the innovative and corresponding State assessment; incorporating common items on both innovative and statewide assessments; or an alternative method that an SEA can demonstrate will provide for an equally rigorous and statistically valid comparison between student performance on the innovative assessment and the existing statewide assessment, including for each subgroup of students under section 1111(b)(2)(B)(xi).
- Provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, and provide appropriate accommodations consistent with section 1111(b)(2). An SEA may also incorporate the principles of universal design for learning in developing its innovative assessments.
- For purposes of the accountability system under section 1111(c)(4)(E), annually measure the progress on the Academic Achievement indicator of at least 95 percent of all students, and 95

percent of students in each subgroup of students under section 1111(c)(2) who are required to take such assessments in participating schools.

- Generate an annual summative determination for each student in a school participating in the innovative assessment system describing the student's grade-level mastery of the State's challenging academic standards under section 1111(b)(1), or, in the case of a student assessed with an alternate assessment aligned with alternate academic achievement standards, an annual summative determination for the student relative to such alternate academic achievement standards.
- Provide disaggregated results by each subgroup of students under section 1111(b)(2)(B)(xi), including timely data for teachers, principals and other school leaders, students, and parents consistent with the statutory requirements for the statewide assessment system and reporting data on State and LEA report cards and provided in an accessible manner to parents.
- Provide an unbiased, rational, and consistent determination of progress toward the State's long-term goals under section 1111(c)(4)(A), for all students and each subgroup of students under section 1111(c)(2), and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) for participating schools relative to non-participating schools so that the SEA may validly and reliably aggregate data from the system for purposes of meeting the statutory requirements for the statewide accountability system (including how the SEA identifies participating and non-participating schools in a consistent manner for comprehensive and targeted support and improvement, consistent with section 1111(c)) and reporting on State and LEA report cards.

Selection Criteria

Proposed § 200.77(c) would require each SEA or consortium to submit an application that addresses each of the selection criteria, described further in proposed § 200.78.

Assurances

Proposed § 200.77(d) would require an SEA, or each SEA in the consortium, to provide the following assurances:

- The SEA will continue use of the statewide academic assessments during the demonstration authority period in any school that is not participating in the demonstration authority, as well as in each participating school if the statewide assessments will be used in addition to the innovative assessments for accountability purposes under section 1111(c) during grades or grade spans when the innovative assessments are not offered, or for purposes of evaluation of the innovative assessments consistent with proposed § 200.78(e).
- The SEA will ensure that all students and each subgroup of students under section 1111(c)(2) in participating schools and LEAs are held to the same challenging academic standards as all other students, except that students with the most significant cognitive disabilities may be assessed with an alternate assessment aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D), and that all students and subgroups of students will receive the instructional support needed to meet those standards.
- The SEA will annually report information pertaining to implementation of the innovative assessment system to the Secretary, including: (1) An update on implementation, including the SEA's progress against its timeline under proposed § 200.78(c), any outcomes or results from its ongoing evaluation and continuous improvement under proposed § 200.78(e), and, if the innovative assessment system is not yet used statewide, the SEA's progress in scaling up the system to additional LEAs or schools consistent with its strategies under proposed § 200.78(a)(4); (2) the performance of participating students, at the State, LEA, and school level, for all students and disaggregated by each subgroup of students under section 1111(c)(2) on the innovative assessment in a manner that does not reveal personally identifiable information; (3) if the innovative assessment system is not yet implemented statewide, school demographic and student achievement information (including by each subgroup of students under section 1111(c)(2)) for participating schools and LEAs and for any schools or LEAs that will participate for the first time in the following year, as well as a description of how the participation of additional schools or LEAs in that year contributes to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs in the State consistent with the SEA's plan and benchmarks under proposed § 200.78(a)(4)(iii); and (4) feedback from teachers, principals, other school leaders, parents, and other stakeholders consulted under proposed § 200.77(a)(2)(i) through (v) about their satisfaction with the innovative assessment system.
- The SEA will ensure that each LEA provides parents of students enrolled in participating schools with specific information about the innovative assessment system consistent with section 1112(e)(2)(B) at the beginning of each school year during which the innovative assessment system will be implemented, in an understandable and uniform format and, to the extent practicable, a language that parents can understand.
- The SEA will ensure that it will coordinate with and provide information to, as applicable, the Institute of Education Sciences for purposes of the progress report described in section 1204(c) and ongoing dissemination of information under section 1204(m).

Initial Implementation in a Subset of LEAs or Schools

If an SEA or consortium seeks to implement an innovative assessment system initially in a subset of its LEAs or schools, rather than statewide, proposed § 200.77(e) would require the SEA or consortium to provide: (1) A description of each LEA, and its participating schools, that will initially participate, including demographic information and its most recent LEA report card under section 1111(h)(2); and (2) an assurance from each LEA that it will comply with all applicable requirements.

Applications From a Consortium

Finally, proposed § 200.77(f) would require a consortium to describe its governance structure, including:

- The role of each SEA member (including financial responsibilities), which may include a description of "affiliate members" that are involved in the consortium's work but are not seeking demonstration authority to implement the innovative assessment system;
- How the member SEAs will manage and, at their discretion, share intellectual property developed by the consortium as a group; and
- How the member SEAs will consider requests from other SEAs to join or leave the consortium and ensure that changes in membership do not affect the consortium's ability to implement the demonstration authority.

Reasons: Proposed § 200.77 would clarify and organize each statutory requirement that an SEA or consortium of SEAs seeking the demonstration authority must meet in its application to the Secretary. Determinations of whether an SEA or consortium meets the requirements would be informed by the peer review process under proposed § 200.76. Proposed § 200.77 would group similar requirements together into the categories below to facilitate application preparation and organization of work.

Consultation

Given the statutory requirement in section 1204(e)(2)(A)(v) of the ESEA, as amended by the ESSA, that innovative assessments be developed in collaboration with certain partners, proposed § 200.77(a) would clarify that consultation with stakeholders must occur prior to the submission of an application and specify that students and experts in the planning, development, and implementation of innovative assessments must be among the stakeholders consulted. Students, especially English learners and students with disabilities, will be significantly affected by the implementation of an innovative assessment and considering their perspectives would help improve the likelihood that the innovative assessment promotes high-quality instruction and sufficient student supports. The proposed regulations would also require that experts be included in the collaboration given the technical challenges of designing and implementing innovative assessments or items that are aligned to challenging State academic standards and are valid, reliable, and of adequate quality for use in State accountability systems. Experts and other partners would provide additional guidance to SEAs and consortia, increasing the strength of their applications.

Innovative Assessment System Requirements

Proposed § 200.77(b) would organize and clarify the statutory requirements related to the design of innovative assessment systems that an SEA or consortium must address in its application for demonstration authority. Clarifying these requirements would help ensure that SEAs can provide a plan for how their innovative assessments does or will meet the relevant requirements under part A of title I, including for assessments to be valid, reliable, of high technical quality, and consistent with relevant, nationally recognized professional and technical standards and to provide for the participation of all students. Proposed § 200.77(b) would also ensure that participating SEAs continue to administer reading/language arts and mathematics assessments to all students annually in grades 3–8 and once in high school, and science assessments to all students once in each grade span, even if students in some schools are taking the innovative assessment, while students in other schools take the statewide assessment. Further, proposed § 200.77(b) would clarify that an SEA may develop an innovative assessment system for use only in certain grades or subjects so long as the statewide assessment is administered to students in participating schools in any required grade or subject in which the SEA is not using an innovative assessment. This would help ensure that an SEA developing an innovative assessment in certain grades or subjects maintains its statewide assessments in other grades and subjects in order to comply with part A of title I during, and after, the demonstration authority period. We also note that an SEA or consortium may propose to develop and scale: (1) An innovative assessment to be used as its general assessment in reading/language arts, mathematics, or science; (2) an innovative alternate assessment to be used as its alternate assessment for students with the most significant cognitive disabilities in any of those subjects; or (3) both.

Proposed § 200.77(b) would also clarify critical statutory requirements related to alignment with the State academic content standards, including the full depth and breadth of those standards, and the State academic achievement standards. These requirements would help ensure that all students are held to the same high expectations and that students not making progress toward those standards are identified so they can receive additional instruction and support. Further, these requirements would reinforce another innovative assessment system requirement: Generating comparable, valid, and reliable results between the statewide and innovative assessment for all students and subgroups of students described in section 1111(b)(2)(B)(xi).

Comparable information about student achievement across schools using different assessments during the demonstration authority period is critical to ensure consistent information on student progress across the State and support valid, reliable, and fair accountability determinations. Consistent with the statute, the proposed regulations would require an SEA to have a plan, which would be evaluated in the application peer review, to annually determine comparability between the two assessment systems while providing the SEA flexibility to select the method of demonstration from a list of options, or to propose an alternative equally rigorous and statistically valid option for demonstrating comparability, based on its specific innovative assessment approach. The peer review will determine the extent to which the innovative assessment system is consistent with, or better than, the State academic assessment in: (1) The validity of inferences drawn about student achievement, (2) the alignment with challenging State academic standards, (3) the classification of students into achievement levels based on the same breadth of knowledge and skills, and (4) reliability, among other criteria. While there are several possible methods of demonstrating comparability across innovative and existing State assessments, a rigorous evaluation of comparability will best support the SEA's ability to meet the statutory requirements. Though innovative assessments need not be the same as existing State tests, the academic expectations they articulate and measure should be consistent. Further, with SEAs likely using both tests concurrently to make school accountability determinations for a period of time, student results must be sufficiently interchangeable for these purposes, making establishing comparability in a psychometrically acceptable manner urgently important. For these reasons, we are particularly interested in receiving comments on whether the options for evaluating comparability of student results from innovative assessments with respect to results from the State assessments will be effective; whether any additional options should be considered; and which options, if any, should not be included or should be modified.

Proposed § 200.77(b) would also clarify the specific elements of the accountability system for which an SEA would need to demonstrate that its innovative assessment system generates consistent and comparable information between participating and non-participating schools and LEAs: Progress toward the State's long-term goals for academic achievement for all students and subgroups of students, and the Academic Achievement indicator used in the State's system of annual meaningful differentiation. Because the ESEA, as amended by the ESSA, relies on multiple measures for differentiation and identification of schools, it is helpful to clarify which measures must be comparable and identify those that are likely to be affected by implementation of the innovative assessment system. Further, proposed § 200.77(b) would ensure that participating schools continue to be held accountable in the same ways as other schools in the State.

Participation in the demonstration authority should not exempt schools from accountability—only from administering the statewide test to all students in each required grade and subject for which an innovative assessment is used instead. The proposed regulations would ensure that all LEAs and schools across the State are treated fairly for accountability purposes and that all students receive the supports they need if their schools are low performing. For these reasons, each SEA would describe how it will continue to identify schools for comprehensive and targeted support and improvement, which would be facilitated by having a consistent measure of progress toward the State's long-term goals and on the Academic Achievement indicator.

Finally, proposed § 200.77(b) would reinforce two other statutory requirements for innovative assessments that are designed to protect equity and promote inclusion of all students. Specifically, an SEA would be required to demonstrate that its innovative assessments provide for the participation of, and are accessible for, all students, including children with disabilities and English learners, by providing appropriate accommodations, where necessary. In addition, for purposes of school accountability under section 1111(c), an SEA must annually measure the academic progress of at least 95 percent of all students and 95 percent of students in each subgroup who are enrolled in schools that are participating under the demonstration authority. By requiring an SEA to include, with its application, a demonstration that it will satisfy these statutory requirements, proposed § 200.77(b) would help ensure that the SEA has designed its innovative assessment system with these requirements in mind and can implement the system consistent with the requirements upon receiving demonstration authority.

Assurances

Proposed § 200.77(d) would clarify the assurances each applicant for demonstration authority must provide. These assurances are related to use of the statewide assessments in schools that are initially not participating in the demonstration authority, as well as in participating schools if the innovative assessment is not given in all required grades and subjects or if the statewide assessment is used for accountability purposes in addition to the innovative assessment; the continued expectation for all students in the State to be held to the same challenging academic standards, including the provision of alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities; annual reporting of data to the Secretary pertaining to implementation of the demonstration authority and coordination with the Institute of Education Sciences; and the provision of information related to the innovative assessment system to parents, consistent with the testing transparency requirements in section 1112. Requiring these assurances would safeguard critical information on the progress of all students that is necessary for accountability and reporting on State and LEA report cards, ensure that the Department receives information necessary from each participating SEA on its progress in implementing and scaling its innovative assessment over time, and promote greater understanding of the implications of a school's use of an innovative assessment among parents by ensuring this information is provided in ways that are accessible and understandable. It would also promote a proactive and supportive relationship between SEAs and the Department in providing technical assistance and guidance to promote high-quality implementation of the demonstration authority.

Selection Criteria

The proposed regulations would also clarify that all applications from SEAs or consortia of SEAs must include information related to each selection criteria described in proposed § 200.78 (*i.e.*, project narrative, prior experience, capacity, and stakeholder support, timeline and budget, supports for educators and students, and evaluation and continuous improvement), so that the components of the application and application process are clear for all interested SEAs. In addition, this will ensure that all SEAs address the entirety of the selection criteria, increasing both the strength of SEA applications and their preparedness to implement the authority.

Initial Implementation in a Subset of LEAs or Schools

The proposed regulations would also reinforce the statutory requirements related to an application from an SEA or consortium that is not proposing to use the innovative assessment initially in all LEAs or schools, including requirements to describe initially participating LEAs and schools and to include from each participating LEA an assurance that it will comply with relevant requirements. Given differences between LEAs, such as size and capacity, that affect the implementation of innovative assessments, proposed § 200.77(e) would promote flexibility for SEAs in how they scale their innovative assessment system to be used statewide.

Applications From a Consortium of States

Finally, proposed § 200.77(f) would clarify how the requirements for demonstration authority apply to a consortium of SEAs. Working in partnership to develop an innovative assessment adds complexity to the work of developing and scaling the assessment, particularly because certain requirements, like alignment to challenging State academic standards, will be specific to individual member SEAs, while the work—and resources required—to meet other requirements, like providing appropriate accommodations, could be shared. As a result, participating in the authority as part of a consortium could promote more efficient development of innovative assessments, or lead to unnecessary delays in implementation. For these reasons, a consortium applicant would be required to describe its governance structure and member SEA roles, including financial responsibilities, as determined by its membership; how member SEAs will manage and share, at their discretion, any intellectual property developed by the consortium; and how the consortium will consider requests from additional States to join or leave the consortium. A consortium could also describe the role of affiliate SEA members. Each of these proposed requirements is critical to help ensure that the consortium is productive, that all required activities are completed by consortium members in a timely manner, and that the innovative assessment can be successfully implemented statewide and used for assessment, accountability, and reporting purposes under part A of title I at the end of the demonstration authority period in each SEA.

Proposed Regulations: Proposed § 200.78 would clarify the selection criteria the Secretary will use to evaluate an application to participate in the demonstration authority, which each SEA must address in its application. The proposed selection criteria fall in five broad areas: (1) Project narrative described in proposed § 200.78(a); (2) prior experience, capacity, and stakeholder support described in proposed § 200.78(b); (3) timeline and budget described in proposed § 200.78(c); (4) supports for educators and students described in proposed § 200.78(d); and (5) evaluation and continuous improvement described in proposed § 200.78(e).

Project Narrative

The first selection criteria that would be established in proposed § 200.78(a) would consider the quality of an SEA's or consortium's plan for implementing the demonstration authority. In determining the quality of the plan, the Secretary would consider:

- The rationale for developing or selecting the proposed innovative assessment system, including the distinct purpose of each assessment; how the system will advance the design and delivery of large-scale assessment in innovative ways; and the extent to which the system as a whole will promote high-quality instruction, mastery of challenging State academic standards, and improved student outcomes for all students and subgroups of students under section 1111(c)(2).
- The SEA's or consortium's plan, developed in consultation with partners, if applicable, to: (1) Develop and use standardized and calibrated scoring tools, rubrics, or other strategies, consistent with relevant nationally recognized professional and technical standards, to ensure high inter-rater reliability and comparability of innovative assessment results, which may include evidence of inter-rater reliability, if available; and (2) train evaluators to use these strategies.

Further, if the innovative assessment system will initially be administered in a subset of schools or LEAs, the Secretary would also consider:

- The strategies each SEA, including each SEA in a consortium, will use to scale the innovative assessment for use in all schools statewide, with its rationale for selecting those strategies.
- The strength of the SEA's or consortium's criteria for determining which LEAs and schools to include in its initial application and when to approve additional LEAs and schools, if applicable, to participate during the demonstration authority period.
- The SEA's plan, including each SEA in a consortium, for ensuring that the inclusion of new LEAs and schools continues to reflect high-quality and consistent implementation across demographically diverse LEAs and schools, or contributes to progress toward achieving such implementation across demographically diverse LEAs and schools, including diversity based on subgroups of students under section 1111(c)(2) and student achievement, during the demonstration authority period. The plan must also include annual benchmarks throughout the five-year demonstration authority period toward achieving high-quality and consistent implementation across LEAs over time that are, as a group, demographically similar to the State as a whole, using the demographics of LEAs initially participating as a baseline.
- The strategies the SEA, including each SEA in a consortium, will use to ensure that all students and each subgroup of students are held to the same challenging academic standards under section 1111(b)(1) as all other students in the State.

Prior Experience, Capacity, and Stakeholder Support

Proposed § 200.78(b) would establish selection criteria related to prior experience and capacity of an SEA, including each SEA in a consortium, and LEAs. An SEA may also describe the prior experience and capacity of any external partners that would support the development and implementation of the innovative assessment under the authority. In evaluating the extent and depth of experience, the Secretary would consider:

- The success and track record of efforts to implement innovative assessments or innovative assessment items aligned to the challenging State academic standards under section 1111(b)(1), in LEAs planning to participate; and
- The SEA's or LEA's development or use of: (1) Effective supports and appropriate accommodations consistent with section 1111(b)(2) for all students, including English learners and children with disabilities, including professional development for school staff on providing such accommodations; (2) effective and high-quality supports for school staff to implement innovative assessments, including professional development; and (3) standardized and calibrated scoring rubrics with documented evidence of the validity, reliability, and comparability of determinations of student mastery or proficiency on the innovative assessments.

Each SEA would also be evaluated on the extent and depth of its capacity to successfully implement innovative assessments, including within each SEA in a consortium, and the quality of its plan to build its capacity, which may include how the SEA or consortium plans to enhance its capacity by collaborating with external partners that will be participating in or supporting its demonstration authority. In evaluating the extent and depth of the SEA and LEA capacity to implement innovative assessment demonstration authority, the Secretary would consider:

- An analysis of how capacity influenced the success of prior efforts to develop and implement innovative assessments or innovative assessment items.
- The strategies the SEA is using, or will use, to mitigate risks, including those identified in its analysis (*e.g.,* risks associated with scaling the innovative assessment system to LEAs with varying levels of capacity, ensuring comparable and reliable scoring of innovative assessments for all students and subgroups of students, availability of funding and staff), and support successful implementation.

Finally, each SEA, including those in a consortia, would be evaluated on the extent and depth of State and local support for the application, as demonstrated by signatures from the following: Superintendents (or equivalent) of LEAs; presidents of local school boards (or equivalent, where applicable); local teacher organizations (including labor organizations, where applicable); and additional affected stakeholders, such as parent organizations, civil rights organizations, and business organizations. In evaluating the strength of support, signatures from these groups from within LEAs participating in the first year of the demonstration authority would also be considered.

Proposed § 200.78(b) also would describe factors that must be considered in evaluating capacity, including the availability of technological infrastructure; State and local laws; dedicated and sufficient staffing, expertise, and resources; and other relevant factors.

Timeline and Budget

In determining the quality of the SEA's or consortium's timeline and budget for implementing demonstration authority, under proposed § 200.78(c) the Secretary would consider:

- The extent to which the timeline reasonably demonstrates that each SEA will implement the innovative assessment system statewide by the end of the demonstration authority period, including a description of the activities to occur in each year, the parties responsible for those activities, and, if applicable, how the member SEAs in a consortium will implement activities at different paces and how the consortium will implement interdependent activities, so long as each member SEA begins using the innovative assessment system in the same school year, consistent with proposed § 200.76(b)(1).
- The adequacy of the project budget for the duration of the requested demonstration authority period, including Federal funds (*e.g.,* consistent with statutory requirements: State

assessment grants under section 1201, grants for supporting effective instruction under section 2101, and consolidated funds for State administration under section 8201), as well as State, local, and non-public sources of funds, to support and sustain, as applicable, the activities in the SEA's or consortium's timeline. Considerations of the budget's adequacy would also include how funding be sufficient to meet expected costs as the SEA takes its innovative assessment system to scale and the degree to which funding is contingent upon future appropriations action at the State or local level or additional commitments from non-public sources of funds.

Supports for Educators and Students

Proposed § 200.78(d) would establish selection criteria related to the quality of supports that each SEA or consortium will use to improve instruction and student outcomes as part of innovative assessment implementation. In determining the quality of supports for educators and students, the Secretary would consider:

- The extent to which the SEA or consortium has developed, provided, and will continue to provide training to LEA and school staff, including teacher, principals, and other school leaders, that will familiarize them with the innovative assessment system, such as procedures for administration, scoring, and reporting.
- The strategies the SEA or consortium has developed and will use to familiarize students, teachers, principals, other school leaders, and other school and LEA staff with the innovative assessment system.
- The strategies the SEA or consortium will use to ensure that all students and each subgroup of students under section 1111(c)(2) in participating schools receive the support, including appropriate accommodations under section 1111(b)(2), they need to meet the challenging State academic standards under section 1111(b)(1).
- If the system includes assessment items that are developed or scored by teachers or other school staff, the strategies the SEA or consortium has developed, or plans to develop, to validly and reliably score those items in an unbiased and objective fashion, including how these strategies engage and support teachers and staff in developing and scoring the assessments, and a description of how the SEA or consortium will use professional development to aid these efforts. Proposed § 200.78(d) would also include examples of strategies, such as templates, prototypes, test blueprints, scoring tools, rubrics, audit plans, and other guides for educators.

Evaluation and Continuous Improvement

The final selection criteria that would be established in proposed § 200.78(e) would consider the quality of the SEA's or consortium's plan to evaluate its implementation of innovative assessment demonstration authority. In determining the quality of its evaluation and continuous improvement plan, the Secretary would consider:

- The strength of its proposed annual evaluation of the innovative assessment system included in its application, including whether the evaluation will be conducted by an independent and experienced third party, and the likelihood this evaluation will sufficiently determine the system's validity, reliability, and comparability to the statewide assessment system consistent with the requirements in proposed § 200.77(b)(4) and (9).
- The SEA's or consortium's plan for continuous improvement of its innovative assessment system, including its process for: (1) Using data, feedback, evaluation results, and other information from participating LEAs and schools to make changes necessary to improve the quality of the innovative assessment system; and (2) evaluating and monitoring implementation of the innovative assessment system in participating LEAs and schools annually.

Reasons: Proposed § 200.78 would set forth the selection criteria that will be used to evaluate applications for the innovative assessment demonstration authority. Selection criteria are useful for SEAs and the Department for several reasons. First, because only seven SEAs may be awarded demonstration authority during the initial demonstration period, peer reviewers and the Secretary will need criteria to assist them in determining which applicants are likely to be successful, and help select applicants in a situation where more than seven SEAs submit high-quality proposals. Additionally, the statutory requirements for the demonstration authority are extensive. By reflecting some of them in the selection criteria, proposed § 200.78 would recognize that SEAs may benefit from having a plan to meet these requirements, so that they can improve and adjust their plans over time, based on the results of their initial implementation of an innovative assessment.

To support SEAs and consortia interested in applying, the proposed regulations would group similar selection criteria together into broad categories to provide clarity for SEAs as they develop applications and organize their work. The categories would be: Project narrative; prior experience, capacity, and stakeholder support; timeline and budget; supports for educators and students; and evaluation and continuous improvement.

Project Narrative

The selection criterion related to an SEA's or consortium's project plan is necessary to support the selection of SEAs for the demonstration authority that have a strong rationale behind their innovative assessment approach, and a clear theory of action to explain how this approach will promote better teaching and learning experiences and improved student outcomes. Further, this criterion will help support the development of an array of innovative assessments so that we may learn from a variety of models, rather than establish a preference for one particular approach, and use the demonstration authority as a vehicle for promoting positive change in the design and delivery of large-scale academic assessments.

This criterion would also support SEAs in developing thoughtful plans to implement requirements of the demonstration authority that may be particularly complex and challenging, including reliable and valid scoring of innovative assessments across participating schools and LEAs and scaling the innovative assessment system to operate statewide. Given that the demonstration authority period may not exceed five years, SEAs and consortia will be most likely to succeed in scaling their innovative assessment system if they have strong criteria for determining when to add new LEAs or schools to the demonstration authority, with strategies to support this process, and a plan to implement the demonstration authority over time in LEAs that are demographically diverse and similar to the State as a whole, so that SEAs promote high-quality implementation of the innovative assessment for all students, including low-income students, minority students, English learners, and children with disabilities, and ensure the assessment is viable in a wide variety of LEA and school contexts.

Prior Experience, Capacity, and Stakeholder Support

Given the challenge of developing and scaling an innovative assessment system, proposed § 200.78(b) would build on the statutory requirement for SEAs to have experience in innovative assessments by establishing selection criteria related to both prior experience and capacity to successfully complete the work. Asking prospective SEAs to examine the success and lessons learned from prior experiences with innovative assessments (which may include experiences learned from any external partners) would help reinforce other critical requirements for the demonstration authority like the inclusion of all students and producing reliable, comparable determinations of student proficiency. Creating selection criteria for experience would also encourage SEAs to plan and pilot their efforts at some level prior to submitting an application, so that they will successfully scale the assessment statewide within the requested demonstration authority period.

Similarly, establishing selection criteria based on the extent and depth of an SEA's and, if applicable, its LEAs' capacity and stakeholder support would also help ensure that the Secretary selects SEAs that are most likely to be successful and have critical support from leaders in participating LEAs, including LEA superintendents, local school boards, local teachers' organizations, and other affected constituencies in the community, such as parents, civil rights, and business organizations. Technological infrastructure, current State and local laws and policies, the availability of staff, expertise (*e.g.*, engagement with technical experts, universities and other researchers, non-profits, and foundations), and other resources are all considerations that will affect whether an SEA can implement and scale an innovative assessment system that is valid, reliable, and high quality. Similarly, SEAs are unlikely to be able to develop and scale their innovative assessment if they do not have sufficient support from the local communities that are expected to implement the innovative assessment. These selection criteria would also provide some flexibility by providing SEAs an opportunity to include strategies they have or will use to mitigate risks and support successful implementation of the demonstration authority.

Timeline and Budget

Proposed § 200.78(c) would establish selection criteria related to the quality of an applicant's timeline and budget for implementing and scaling its innovative assessment system. A detailed timeline, along with adequate budgetary resources, are necessary to support SEAs in this work and to ensure that the Secretary awards demonstration authority to SEAs that are best-equipped to implement a high-quality, statewide innovative assessment within the requested demonstration authority period and, if needed, extension period under proposed § 200.80(b).

Further, proposed § 200.78(c) would recognize that some SEAs in a consortium may need more time than others to scale the innovative assessment by providing flexibility as to the pace of activities across SEAs in the consortium, so long as all member SEAs begin implementation of the innovative assessment in the first year of the demonstration authority period, consistent with the proposed definition in § 200.76. Consistent with proposed § 200.77(f), other SEAs may join the demonstration authority of the consortium at a future date when they are ready to implement and use the innovative assessment instead of their statewide academic assessments for accountability and reporting purposes.

Supports for Educators and Students

The fourth proposed selection criteria area would consider how SEAs will support educators and students to successfully implement the innovative assessment system. Each SEA or consortium would be evaluated on the quality of their supports in this area. Without a network of effective supports, and a strong rationale for selecting them, innovative assessments, regardless of the quality of their design, are unlikely to enhance classroom instruction and student outcomes. By including these statutory requirements as selection criteria, the Secretary would be better able to select applicants for demonstration authority whose innovative assessment systems are not only valid, reliable, and high-quality, but also most likely to lead to meaningful changes for students and teachers in daily classroom instruction.

Evaluation and Continuous Improvement

The final selection criteria area in proposed § 200.78(e) would consider the quality of each SEA's or consortium's plan to annually evaluate its implementation of the innovative assessment system demonstration authority. These regulations are needed so that an SEA would be evaluated favorably for proposing an evaluation plan that is likely to provide unbiased results and sufficiently determine if its innovative assessment system is valid, reliable, and comparable with respect to the statewide assessment system, a key requirement that must be met to successfully transition to using the innovative assessment statewide for purposes of section 1111(b)(2) and 1111(c), consistent with proposed § 200.79. Further, the selection criteria would support SEAs in developing a continuous improvement process that encourages adjustments in innovative assessments over time, based on lessons learned from implementation, and would help ensure that innovative assessments provide useful and timely information to educators and parents about a student's knowledge and abilities. Because innovative assessment approaches are novel, by design, a high-quality evaluation and continuous improvement process is critical to ensure that both SEAs and the Department learn from their experiences and make improvements over time, consistent with the assurance for annual reporting under proposed § 200.77(d)(3)(A). Establishing this selection criterion would signal the importance for SEAs to create processes to enable these adjustments to be made from start to finish, instead of conducting an evaluation on the back-end when the results would be provided too late to inform the SEA's assessment design or implementation approach.

Section 200.79 Transition to Statewide Use

Statute: Section 1204(j) of the ESEA, as amended by the ESSA, permits an SEA to operate its innovative assessment system for the purposes of academic assessments and the statewide accountability system under section 1111(b) and (c) if, at the conclusion of the demonstration authority period or extension period, the SEA has scaled the system to be used statewide and demonstrated that the system is of high quality, as determined by the Secretary through the peer review process described in section 1111(a)(4). Section 1204(j) specifies that an innovative assessment system is of high quality if:

(1) It meets all requirements of section 1204;

(2) The SEA has examined the effects of the system on other measures of student success, including indicators in the statewide accountability system under section 1111(c)(4)(B);

(3) The system provides coherent and timely information about student achievement based on the challenging State academic standards, including objective measurements of academic achievement, knowledge, and skills, that is valid, reliable, and consistent with relevant, nationally recognized professional and technical standards;

(4) The SEA has solicited feedback from teachers, principals, other school leaders, and parents about their satisfaction with the system; and

(5) The SEA has demonstrated that the system was used to measure: (a) The achievement of all students that participated in the system; and (b) the achievement of not less than the same percentage of students overall and in each of the subgroups of students in section 1111(c)(2), as measured under section 1111(c)(4)(E), as were assessed with the academic assessments required by section 1111(b)(2).

Section 1204(j) specifies that, in determining whether an innovative assessment system is of high quality based on the factors listed, the baseline year for an affected LEA is the first year in which the LEA used the system.

Current Regulations: None.

Proposed Regulations: In general, proposed § 200.79 would implement and clarify the statutory provisions in section 1204(j) of the ESEA, as amended by the ESSA. Consistent with section 1204(j), proposed § 200.79(a) would permit an SEA to request that the Secretary determine whether the SEA's innovative assessment system is of high quality and may be used for purposes of academic assessments and the statewide accountability system under section 1111(b)(2) and (c). Proposed § 200.79(a) would clarify that the SEA may use the system for such purposes only after the Secretary determines that the system is of high quality.

Proposed § 200.79(b) would provide the criteria for the Secretary to use in determining at the end of the demonstration authority period (through the peer review process of assessments and accountability systems described in section 1111(a)(4)) whether an innovative assessment system is of high quality, including that each innovative assessment in a required grade or subject meets all of the requirements of section 1111(b)(2) and the statutory requirements in section 1204 specific to an innovative assessment. Specifically:

- Regarding the criterion that an SEA has examined the effects of the system on other measures of student success, including indicators in the statewide accountability system under section 1111(c)(4)(B), proposed § 200.79(b) would require the SEA to demonstrate it has examined the statistical relationship between student performance on the innovative assessment in each subject area and on the other measures in remaining indicators in the statewide accountability system (*i.e.*, Graduation Rate, Academic Progress, Progress in Achieving English Language Proficiency, and School Quality or Student Success), for each grade span in which an innovative assessment is used and how the use of an innovative assessment in the Academic Achievement indicator affects meaningful differentiation of schools.
- Regarding the criterion that an SEA has solicited feedback from teachers, principals, other school leaders, parents, and other affected stakeholders described in proposed § 200.77(a)(2)(i) through (v) about their satisfaction with the innovative assessment system, proposed § 200.79(b) would require the SEA to have solicited and taken into account feedback from these groups.
- Regarding the criterion that an SEA demonstrate that the innovative assessment system was used to measure the achievement of all students, proposed § 200.79(b) would require that such a demonstration be provided for all students and each subgroup of students under section 1111(c)(2) and include how appropriate accommodations were provided consistent with section 1111(b)(2).

Proposed § 200.79(c) would implement the provision in section 1204(j) specifying that, in determining whether an innovative assessment system is of high quality, the baseline year for an affected LEA is the first year in which the LEA used the system.

Finally, proposed § 200.79(d) would clarify, in the case of a consortium of SEAs, that each SEA must submit evidence to the Secretary to determine whether the innovative assessment system is of high quality and, if evidence is submitted for the consortium as a whole, the evidence must demonstrate how each member SEA meets each requirement of proposed § 200.79(b) applicable to an SEA.

Reasons: Proposed § 200.79 would clarify the statutory requirements, including peer review under proposed § 200.79(a) through (b), for how an SEA can transition from implementing an innovative assessment system under the demonstration authority to implementing an innovative assessment system as part of its statewide assessment system under title I, part A of the ESEA.

The proposed regulations are necessary to ensure that innovative assessments, before they are used for purposes of both State assessments and accountability under part A of title I, meet the same requirements that all State academic assessments must meet, including, but not limited to, alignment to challenging State academic standards, validity, reliability, technical quality, and accessibility for all students. These proposed regulations would help ensure that innovative assessments are treated similarly in terms of the peer review process, rather than held to a different standard than other academic assessments States may use under title I, part A while also incorporating the unique requirements innovative assessments must meet under the statutory provisions in section 1204(j)(1)(B).

Further, proposed § 200.79(b) would support an SEA in meeting these specific requirements. For example, in demonstrating the SEA has examined the effects of its innovative assessments on other measures of student success in the accountability system, the proposed regulations would clarify that this means examining the statistical relationship between student performance in each subject area on the innovative assessment and student performance on the remaining indicators in the State accountability system within a particular grade-span, such as the Graduation Rate, Academic Progress, and School Quality or Student Success indicators. This would provide the SEA and the Department with a better understanding of how the innovative assessments relate to or correlate with other student performance data and how their inclusion in the State accountability system will affect the ability of the system to meaningfully differentiate among all public schools, as required under section 1111(c).

Proposed § 200.79(d) would also provide flexibility for how SEAs participating in the demonstration authority within a consortium may transition to using the innovative assessments for purposes of part A of title I so that SEA members of the consortium that have reached statewide implementation of the innovative assessment system may undergo peer review of the system on their own, recognizing that not all SEA members may be implementing the innovative assessments on the same timeline under proposed § 200.77(b).

By clarifying the process for transition to statewide use in these ways, proposed § 200.79 would provide essential safeguards to maintain high-quality, annual assessments and information about student progress toward meeting the challenging State academic standards for parents, educators, administrators, and the public.

Section 200.80 Extension, Waivers, and Withdrawal of Authority

Statute: Section 1204(g) of the ESEA, as amended by the ESSA, permits the Secretary to extend a demonstration authority for an additional two years if the SEA provides evidence that its innovative assessment system continues to meet the requirements of section 1204(c) *[sic]* of the ESEA, as amended by the ESSA, and that the SEA has a plan for, and capacity to, transition to statewide use of the system by the end of the extension period.

Section 1204(i) of the ESEA, as amended by the ESSA, requires the Secretary to withdraw an SEA's demonstration authority if, at any time during the demonstration authority period or extension period, the SEA cannot provide evidence to the Secretary that: (1) It has a high-quality plan to transition to statewide use of its innovative assessment system by the end of the demonstration authority period or extension period (if the system will initially be administered in a subset of LEAs); and (2) its innovative assessment system:

(a) Meets the requirements in section 1204(c) *[sic];*

(b) Includes all students attending participating schools, including each of the subgroups of students in section 1111(c)(2);

(c) Provides an unbiased, rational, and consistent determination of progress toward the long-term academic achievement goals described under section 1111(c)(4)(A)(i) for all students in participating schools, which are comparable to measures of academic achievement under section 1111(c)(4)(B)(i) across the State; and

(d) Demonstrates comparability to the statewide assessments under section 1111(b)(2) in content coverage, difficulty, and quality.

Section 1204(j) of the ESEA, as amended by the ESSA, permits an SEA to request, and the Secretary to grant, a delay of the withdrawal of the demonstration authority under section 1204(i) of the ESEA, as amended by the ESSA, for the purpose of providing the SEA with the time necessary to transition to statewide use of its innovative assessment system if, at the conclusion of the SEA's demonstration authority period and two-year extension, the State has otherwise met and continues to comply with all requirements of section 1204 of the ESEA, as amended by the ESSA, and provides a high-quality plan for transition to statewide use of the system in a reasonable period of time.

Current Regulations: None.

Proposed Regulations: Proposed § 200.80(a) would implement the statutory provision permitting the Secretary to extend demonstration authority for an additional two years (*i.e.,* one two-year extension, or two one-year extensions) if the SEA provides evidence that:

- Its innovative assessment system continues to meet the requirements of title I, part B of the ESEA, as amended by the ESSA;
- It is implementing the authority consistent with its application for demonstration authority; and
- The SEA has a plan for, and capacity to, transition to statewide use of the system by the end of the extension period.

Proposed § 200.80(a) would also specify that the SEA's plan to transition to statewide use must include input from the stakeholders in proposed § 200.77(a)(2)(i) through (v) and that the SEA's evidence of capacity to transition to statewide use must be provided for the SEA and each LEA not currently participating. Proposed § 200.80(a) would further clarify that, in the case of a consortium, the Secretary may extend demonstration authority for the consortium as a whole or for individual member SEAs, as necessary.

Proposed § 200.80(b) would implement the statutory requirements for the Secretary to withdraw an SEA's demonstration authority, with the following clarifications:

- Regarding the SEA's high-quality plan to transition to statewide use of an innovative assessment, proposed § 200.80(b)(i) would require that the plan include input from all stakeholders in proposed § 200.77(a)(2)(i) through (v).
- Regarding evidence an SEA may be asked to provide, proposed § 200.80(b)(ii) would clarify that evidence may be requested related to how the SEA has met all requirements for innovative assessments under proposed § 200.77, including § 200.77(b), and how the SEA is implementing the authority in accordance with its responses to the selection criteria under proposed § 200.78.
- Regarding evidence of inclusion of all students in participating schools that an SEA may be asked to provide, proposed § 200.80(b)(ii) would require that such evidence include how the system provides for appropriate accommodations consistent with section 1111(b)(2).
- Regarding evidence that the system provides unbiased, rational, and consistent determinations of progress toward academic achievement goals that an SEA may be asked to provide, proposed § 200.80(b)(ii) would require that such determinations consider the long-term goals and measurements of interim progress described in section 1111(c)(4)(A) for all students and subgroups of students listed in section 1111(c)(2), and provide a comparable measure of performance, including with data comparing performance disaggregated by subgroup, on the Academic Achievement indicator under section 1111(c)(4)(B) for participating schools relative to non-participating schools.

Further, proposed § 200.80(b)(2) would clarify that, in the case of a consortium: (1) The Secretary may withdraw the demonstration authority provided to the consortium as a whole if the Secretary requests, and no member SEA presents, the required information in a timely manner; and (2) a consortium may continue to operate after one or more of its members has had its authority withdrawn, so long as remaining member SEAs continue to meet all requirements.

Proposed § 200.80(c) would implement the statutory requirements regarding delay of the withdrawal of demonstration authority, with the following specifications:

- Proposed § 200.80(c) would require that a waiver to delay withdrawal of demonstration authority may be awarded by the Secretary to an SEA for one year.
- Regarding the SEA's high-quality plan to transition to statewide use in a reasonable period of time, proposed § 200.80(c) would require the plan to include input from the stakeholders in proposed § 200.77(a)(2)(i) through (v).
- Regarding a consortium, proposed § 200.80(c) would permit the Secretary to grant a one-year waiver for the consortium as a whole or individual member SEAs, as needed.

Finally, proposed § 200.80(d) would clarify that an SEA must return to using, in all LEAs and schools, an annual statewide assessment system that meets the requirements of section 1111(b)(2), if the Secretary withdraws demonstration authority or if the SEA voluntarily decides to terminate use of the innovative assessment system, and notify participating LEAs that authority has been withdrawn and of the SEA's plan to transition back to a statewide assessment.

Reasons: Proposed § 200.80(a) would provide clarity to SEAs and consortia that require additional time, beyond the demonstration authority period of five years, to scale their innovative assessment system statewide and successfully submit the system for approval for use under part A of title I through the peer review process for assessments and accountability systems described in proposed § 200.79. These clarifications would recognize that taking an innovative assessment system to scale is challenging and complex work, while also providing necessary guardrails to ensure that an SEA requesting an extension of authority, for up to two years, has developed a high-quality plan and necessary capacity to implement the innovative assessment in all remaining LEAs and schools by the end of the extension. As the purpose of the authority is to develop a new statewide innovative assessment system, rather than operate multiple assessments in perpetuity, the proposed regulations would strike a balance between flexibility for States and the expectation to scale innovative assessments in a reasonable timeframe.

Similarly, proposed § 200.80(c) would clarify the purpose of the statutory provision allowing for waivers under section 1204(j)(3) of the ESEA, as amended by the ESSA, for SEAs that need additional time after the extension period to implement the innovative assessment system statewide for purposes of part A of title I. By specifying that the purpose of a waiver is to provide an SEA with an additional year, after the expiration of the extension period, in order to receive final approval from the Secretary, through peer review, to use its innovative assessment under part A of title I, the proposed regulations would help distinguish between the purpose of an extension (*i.e.,* to finish scaling the innovative assessment statewide) and a waiver (*i.e.,* to provide time for SEAs to complete the peer review process). Together, these provisions would provide needed flexibility for SEAs that require more time, without undermining the ultimate goal of the demonstration authority to develop an innovative assessment that meets the statutory requirements for statewide assessments under part A of title I.

Proposed § 200.80(b) and (d) are necessary to clarify the provisions for withdrawal of demonstration authority. Because withdrawal of demonstration authority is a significant consequence for SEAs that have invested time and resources in developing an innovative assessment, we believe it is critical to provide States clear guidance around transitioning away from exclusively using innovative assessments in some LEAs and to clarify the reasons enumerated in the statute for which an SEA may lose demonstration authority, including lacking a high-quality plan for transition to statewide use or failure to meet statutory requirements for the quality of innovative assessments, such as validity, reliability, technical quality, accessibility, and comparability. The proposed regulations would also help maintain similar expectations for the quality of innovative assessments across all participating SEAs, including SEAs in a consortium, by not unfairly penalizing all member SEAs in a consortium for poor implementation by one of its members.

Together, these clarifications are necessary in order to ensure that States continue to administer high-quality assessments annually to all students and provide critical information on student progress to parents, educators, and the public, even if the Secretary withdraws authority or if an SEA voluntarily ceases implementation of its innovative assessment. In this way, proposed § 200.80 would underscore the importance of having annual information on student progress not only for purposes of accountability and reporting, as required in the statute, but also for informing high-quality instruction tailored to students' needs and empowering parents and families in supporting their child's education.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action and the potential costs and benefits. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Need for Regulatory Action

As discussed in detail in the *Significant Proposed Regulations* section of this document, the Department believes that regulatory action is needed to ensure effective implementation of section 1204 of the ESEA, as amended by the ESSA, which permits the Secretary to provide an SEA or consortium of SEAs that meets the application requirements with authority to establish, operate, and evaluate a system of innovative assessments. Crucially, the Department believes that regulatory action is needed to ensure that these assessments ultimately can meet requirements for academic assessments and be used in statewide accountability systems under section 1111 of the ESEA, as amended by the ESSA, including requirements for assessment validity, reliability, technical quality, and alignment to challenging State academic standards. Absent regulatory action, SEAs implementing innovative assessment authority run a greater risk of developing assessments that are inappropriate or inadequate for these purposes, which could hinder State and local efforts to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps consistent with the purpose of title I of the ESEA, as amended by the ESSA. By increasing the likelihood that innovative academic assessments are both high quality and can be used in an SEA's statewide accountability system under section 1111 of the ESEA, as amended by the ESSA, as demonstrated through the peer review process under section 1111(a)(4) at the end of the SEA's demonstration authority period, these regulations also have the potential to provide proof points for other States so that those not participating may consider and benefit from high-quality, innovative assessment models developed under the demonstration authority.

Discussion of Potential Costs and Benefits

The primary benefit of the regulations proposed in this document is the administration of statewide assessments that more effectively measure student mastery of challenging State academic standards and better inform classroom instruction and student supports, ultimately leading to improved academic outcomes for all students. We believe that this benefit outweighs associated costs to a participating SEA, which may be financed with funds received under the Grants for State Assessments and Related Activities program and funds reserved for State administration under part A of title I.

Participation in the innovative assessment demonstration authority is voluntary and limited during the initial demonstration period to seven SEAs. In light of the initial limits on participation, the number and rigor of the statutory application requirements, and the high degree of technical complexity involved in establishing, operating, and evaluating innovative assessment systems, we anticipate that few SEAs will seek to participate. Based on currently available information, we estimate that, initially, up to five SEAs will apply.

For those SEAs that apply and are provided demonstration authority (consistent with the proposed regulations), implementation costs may vary considerably based on a multitude of factors, including: The number and type(s) of assessments the SEA elects to include in its system; the differences between those assessments and the SEA's current statewide assessments, including with respect to assessment type, use of assessment items, and coverage of State academic content standards; the number of grades and subjects in which the SEA elects to administer those assessments; whether the SEA will implement its system statewide upon receiving demonstration authority and, if not, the SEA's process and timeline for scaling the system up to statewide implementation; and whether the SEA is part of a consortium (and thus may share certain costs with other consortium members). Because of the potential wide variation in innovative assessment systems along factors such as these, we do not believe we can produce useful or reliable estimates of the potential cost to implement the innovative assessment demonstration authority for the typical SEA participant and, for the purpose of determining whether it is feasible to provide estimates of implementation cost under the final regulations, will consider input from interested SEAs regarding their anticipated costs and the extent to which those costs can be met with Federal funds.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.76 *Innovative assessment demonstration authority.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the majority of LEAs qualify as small entities under this definition, the regulations proposed in this document would not have a significant economic impact on a substantial number of small LEAs because few SEAs are expected to implement innovative assessment demonstration authority and the implementation costs for those SEAs and their participating LEAs can be supported with Federal grant funds. We believe the benefits provided under this proposed regulatory action would outweigh the associated costs for these small LEAs. In particular, the proposed regulations would help ensure that the LEAs can implement assessments that measure student mastery of State academic content standards more effectively and better inform classroom instruction and student supports, ultimately leading to improved academic outcomes for all students. We invite comments from small LEAs as to whether they believe the proposed regulations would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 200.76(c), 200.77, and 200.78 of the proposed regulations contain information collection requirements. The Department is developing an Information Collection Request based upon these proposed regulations, and will submit a copy of these sections and the information collection instrument to OMB for its review before requiring the submission of any information based upon these regulations.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although we do not believe the proposed regulations would have federalism implications, we encourage State and local elected officials to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated: July 1, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C 6301–6576, unless otherwise noted.

■ 2. Add a new undesignated center heading following § 200.75 to read as follows:

Innovative Assessment Demonstration Authority

■ 3. Add § 200.76 to read as follows:

§ 200.76 Innovative assessment demonstration authority.

(a) *In general.* (1) The Secretary may provide an SEA, or consortium of SEAs, with authority to establish and operate an innovative assessment system in its public schools (hereinafter referred to as "innovative assessment demonstration authority").

(2) An SEA or consortium of SEAs may implement the innovative assessment demonstration authority during its demonstration authority period and, if applicable, extension or waiver period described in § 200.80(a) and (c), after which the Secretary will either approve the system for statewide use consistent with § 200.79 or withdraw the authority consistent with § 200.80(b).

(b) *Definitions.* For purposes of §§ 200.76 through 200.80—

(1) *Demonstration authority period* refers to the period of time over which an SEA, or consortium of SEAs, is authorized to implement the innovative assessment demonstration authority, which may not exceed five years and does not include the extension or waiver period under § 200.80. An SEA must use its innovative assessment system in all participating schools instead of, or in addition to, the statewide assessment under section 1111(b)(2) of the Act for purposes of accountability and reporting under section 1111(c) and 1111(h) of the Act in each year of the demonstration authority period.

(2) *Innovative assessment system* means a system of reading/language arts, mathematics, or science assessments administered in at least one required grade under section 1111(b)(2)(B)(v) of the Act that produces an annual summative determination of grade-level achievement aligned to the State's challenging academic standards under section 1111(b)(1) of the Act for each student, or in the case of a student assessed using an alternate assessment aligned with alternate academic achievement standards under section 1111(b)(1)(E) of the Act, an annual summative determination relative to such alternate academic achievement standards for each such student, and that may include one or more of the following types of assessments:

(i) Cumulative year-end assessments.

(ii) Competency-based assessments.

(iii) Instructionally embedded assessments.

(iv) Interim assessments.

(v) Performance-based assessments.

(vi) Another innovative assessment design that meets the requirements under § 200.77(b).

(c) *Peer review of applications.* (1) An SEA or consortium of SEAs seeking innovative assessment demonstration authority under paragraph (a) of this section must submit an application to the Secretary that demonstrates how the applicant meets all application requirements under § 200.77 and that addresses all selection criteria under § 200.78.

(2) The Secretary uses a peer review process, including a review of the SEA's application to determine that it has met each of the requirements under § 200.77 and sufficiently addressed each of the selection criteria under § 200.78, to inform the Secretary's decision of whether to award the innovative assessment demonstration authority to an SEA or consortium of SEAs. Peer review teams consist of experts and State and local practitioners who are knowledgeable about innovative assessment systems, including—

(i) Individuals with past experience developing innovative assessment and accountability systems that support all students and subgroups of students under section 1111(c)(2) of the Act (*e.g.,* psychometricians, measurement experts, researchers); and

(ii) Individuals with experience implementing such innovative assessment and accountability systems (*e.g.,* State and local assessment directors, educators);

(3)(i) If points or weights are assigned to the selection criteria under § 200.78, the Secretary will inform applicants in the application package or a notice published in the **Federal Register** of—

(A) The total possible score for all of the selection criteria under § 200.78; and

(B) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(ii) If no points or weights are assigned to the selection criteria and selected factors under § 200.78, the Secretary will evaluate each criterion equally and, within each criterion, each factor equally.

(d) *Initial demonstration period.* (1) The initial demonstration period includes the first three years in which the Secretary awards at least one SEA, or consortium of SEAs, with the innovative assessment demonstration authority, concluding with publication of the progress report described in section 1204(c) of the Act. During the initial demonstration period, the Secretary may provide innovative assessment demonstration authority to—

(i) No more than seven SEAs in total, including those SEAs participating in consortia; and

(ii) Consortia that include no more than four SEAs.

(2) An SEA that is affiliated with a consortium, but not currently proposing to use its innovative assessment system under the demonstration authority, is not included in the application under paragraph (c) of this section or counted toward the limitation in consortia size under paragraph (d)(ii) of this section.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e–3)

■ 4. Section 200.77 is revised to read as follows:

§ 200.77 Demonstration authority application requirements.

An SEA or consortium of SEAs seeking the innovative assessment demonstration authority must submit to the Secretary an application that includes the following:

(a) *Consultation.* Evidence that the SEA or consortium has developed an innovative assessment system in collaboration with partners, including—

(1) Experts in the planning, development, implementation, and evaluation of innovative assessment systems; and

(2) Affected stakeholders in the State, or in each State in the consortium, including—

(i) Those representing the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the Act;

(ii) Teachers, principals, and other school leaders;

(iii) LEAs;

(iv) Students and parents; and

(v) Civil rights organizations.

(b) *Innovative assessment system.* A demonstration that the innovative assessment system does or will—

(1) Meet the requirements of section 1111(b)(2)(B) of the Act, except that an innovative assessment—

(i) Need not be the same assessment administered to all public elementary and secondary school students in the State during the demonstration authority period, if the innovative assessments will be administered initially in a subset of LEAs, or schools within an LEA, provided that the statewide academic assessments under section 1111(b)(2) of the Act are administered in any school that is not participating in the innovative assessments; and

(ii) Need not be administered annually in each of grades 3–8 and at least once in grades 9–12 in the case of reading/language arts and mathematics assessments, and at least once in grades 3–5, 6–9, and 10–12 in the case of science assessments, so long as the statewide academic assessments under section 1111(b)(2) of the Act are administered in any required grade and subject in which the SEA does not choose to implement an innovative assessment;

(2) Align with the State academic content standards under section 1111(b)(1) of the Act, including the full depth and breadth of such standards;

(3) Express student results or competencies in terms consistent with the State's academic achievement standards under section 1111(b)(1) of the Act and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards;

(4) Provide for comparability to the State academic assessments under section 1111(b)(2) of the Act, including by generating results that are valid, reliable, and comparable for all students and for each subgroup of students under section 1111(b)(2)(B)(xi) of the Act, as compared to the results for such students on the State assessments. Consistent with the SEA's or consortium's evaluation plan under § 200.78(e), the SEA must plan to annually determine comparability during each year of its demonstration authority period in one of the following ways:

(i) Administering full assessments from both the innovative and statewide assessment system to all students enrolled in schools participating in the demonstration authority, such that at least once in any grade span (*e.g.,* 3–5, 6–8, or 9–12) and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered to all such students. As part of this demonstration, the innovative assessment and statewide assessment need not be administered to an individual student in the same school year.

(ii) Administering full assessments from both the innovative and statewide assessment system to a demographically representative sample of students and subgroups of students under section 1111(c)(2) of the Act, from among those students enrolled in schools participating in the demonstration authority, such that at least once in any grade span (*e.g.,* 3–5, 6–8, or 9–12) and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered in the same school year to all students included in the sample.

(iii) Including, as a significant portion of the innovative and statewide assessment systems in each required grade and subject in which both assessments are administered, common items that, at a minimum, have been previously pilot tested or field tested for use in either the statewide or innovative assessment system.

(iv) An alternative method for demonstrating comparability that an SEA can demonstrate will provide for an equally rigorous and statistically valid comparison between student performance on the innovative assessment and the existing statewide assessment, including for each subgroup of students under section 1111(b)(2)(B)(xi) of the Act.

(5) Provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, provide appropriate accommodations consistent with section 1111(b)(2) of the Act, and, as appropriate, incorporate the principles of universal design for learning;

(6) For purposes of the State accountability system consistent with section 1111(c)(4)(E) of the Act, annually measure in participating schools the progress on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act of at least 95 percent of all students, and 95 percent of students in each subgroup of students under section 1111(c)(2) of the Act, who are required to take such assessments consistent with paragraph (b)(1)(ii) of this section;

(7) Generate an annual summative determination for each student in a school participating in the demonstration authority that describes the student's mastery of the State's grade-level academic content standards based on the State's academic achievement standards under section 1111(b)(1) of the Act, or in the case of a student assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(1)(E) of the Act, an annual summative determination relative to such alternate academic achievement standards for each such student, using the annual data from the innovative assessment;

(8) Provide disaggregated results by each subgroup of students under section 1111(b)(2)(B)(xi) of the Act, including timely data for teachers, principals and other school leaders, students, and parents consistent with section 1111(b)(2)(B) and (h) of the Act, and provide results to parents in a manner consistent with paragraph (c)(4)(i) of this section; and

(9) Provide an unbiased, rational, and consistent determination of progress toward the State's long-term goals under section 1111(c)(4)(A) of the Act for all students and each subgroup of students under section 1111(c)(2) of the Act and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act for participating schools relative to non-participating schools so that the SEA may validly and reliably aggregate data from the system for purposes of meeting requirements for—

(i) Accountability under section 1111(c) of the Act, including how the SEA will identify participating and non-participating schools in a consistent manner for comprehensive and targeted support and improvement; and

(ii) Reporting on State and LEA report cards under section 1111(h) of the Act.

(c) *Selection Criteria.* Information that addresses each of the selection criteria under § 200.78.

(d) *Assurances.* Assurances that the SEA, or each SEA in the consortium, will—

(1) Continue use of the statewide academic assessments in reading/language arts, mathematics, and science required under section 1111(b)(2)(B) of the Act—

(i) In all schools that are not participating in the innovative assessment demonstration authority; and

(ii) In all schools that are participating in the innovative assessment demonstration authority but for which such assessments will be used in addition to innovative assessments for accountability purposes under section 1111(c) of the Act consistent with paragraph (b)(1)(ii) of this section or for evaluation purposes consistent with § 200.78(e) during the demonstration authority period;

(2) Ensure that all students and each subgroup of students under section 1111(c)(2) of the Act in participating schools and LEAs are held to the same challenging academic standards under section 1111(b)(1) of the Act as all other students, except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet such standards;

(3) Report the following annually to the Secretary:

(i) An update on implementation of the innovative assessment demonstration authority, including—

(A) The SEA's progress against its timeline under § 200.78(c) and any outcomes or results from its evaluation and continuous improvement process under § 200.78(e); and

(B) If the innovative assessment system is not yet implemented statewide, a description of the SEA's progress in scaling up the system to additional LEAs or schools consistent with its strategies under § 200.78(a)(4).

(ii) The performance of all participating students at the State, LEA, and school level, for all students and disaggregated for each subgroup of students under section 1111(c)(2) of the Act, on the innovative assessment, except that such data may not reveal any personally identifiable information.

(iii) If the innovative assessment system is not yet implemented statewide, school demographic and student achievement information, including for the subgroups of students under section 1111(c)(2) of the Act, for participating schools and LEAs and for any schools or LEAs that will participate for the first time in the following year, and a description of how the participation of any additional schools or LEAs in that year contributes to progress toward achieving high-quality and consistent implementation across demographically diverse LEAs in the State consistent with the SEA's benchmarks described in § 200.78(a)(4)(iii).

(iv) Feedback from teachers, principals, other school leaders, parents, and other stakeholders consulted under § 200.77(a)(2)(i) through (v) from participating schools and LEAs about their satisfaction with the innovative assessment system;

(4) Ensure that each LEA informs parents of students in participating schools about the innovative assessment consistent with section 1112(e)(2)(B) of the Act at the beginning of each school year during which an innovative assessment will be implemented. Such information must be—

(i) In an understandable and uniform format;

(ii) To the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(iii) Upon request by a parent who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12101, provided in an alternative format accessible to that parent; and

(5) Coordinate with and provide information to, as applicable, the Institute of Education Sciences for purposes of the progress report described in section 1204(c) of the Act and ongoing dissemination of information under section 1204(m) of the Act.

(e) *Initial implementation in a subset of LEAs or schools.* If the system will initially be administered in a subset of LEAs or schools in a State—

(1) A description of each LEA, and each of its participating schools, that will initially participate, including demographic information and its most recent LEA report card under section 1111(h)(2) of the Act; and

(2) An assurance from each participating LEA that the LEA will comply with all requirements of this section.

(f) *Applications from a consortium.* If submitted by a consortium of SEAs—

(1) A description of the governance structure of the consortium, including—

(i) The roles and responsibilities of each member SEA, which may include a description of affiliate members, if applicable, not seeking demonstration authority to implement the innovative assessment system and must include a description of financial responsibilities of member SEAs;

(ii) How the member SEAs will manage and, at their discretion, share intellectual property developed by the consortium as a group; and

(iii) How the member SEAs will consider requests from SEAs to join or leave the consortium and ensure that changes in membership do not affect the consortium's ability to implement innovative assessment demonstration authority consistent with the requirements and selection criteria in §§ 200.77 and 200.78.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e–3)

■ 5. Section 200.78 is revised to read as follows:

§ 200.78 Demonstration authority selection criteria.

The Secretary reviews an application by an SEA or consortium of SEAs seeking innovative assessment demonstration authority consistent with § 200.76(c) based on the following selection criteria:

(a) *Project narrative.* The quality of the SEA's or consortium's plan for implementing innovative assessment demonstration authority. In determining the quality of the plan, the Secretary considers—

(1) The rationale for developing or selecting the particular innovative assessment system to be implemented under the demonstration authority, including—

(i) The distinct purpose of each assessment that is part of the innovative assessment system and how the system will advance the design and delivery of large-scale, statewide academic assessments in innovative ways; and

(ii) The extent to which the innovative assessment system as a whole will promote high-quality instruction, mastery of challenging State academic standards, and improved student outcomes, including for each subgroup of students under section 1111(c)(2) of the Act;

(2) The plan the SEA or consortium, in consultation with its partners, if applicable, has to—

(i) Develop and use standardized and calibrated scoring tools, rubrics, or other strategies throughout the demonstration authority period, consistent with relevant nationally recognized professional and technical standards, to ensure inter-rater reliability and comparability of innovative assessment results, which may include evidence of inter-rater reliability; and

(ii) Train evaluators to use such strategies; and

(3) If the system will initially be administered in a subset of schools or LEAs in a State—

(i) The strategies the SEA, including each SEA in a consortium, will use to scale the innovative assessment to all schools statewide, with a rationale for selecting those strategies;

(ii) The strength of the SEA's or consortium's criteria that will be used to determine LEAs and schools that will initially participate and when to approve additional LEAs and schools, if applicable, to participate during the requested demonstration authority period; and

(iii) The SEA's plan, including each SEA in a consortium, for how it will ensure that, during the demonstration authority period, the inclusion of additional LEAs and schools continues to reflect high-quality and consistent implementation across demographically diverse LEAs and schools, or contributes to progress toward achieving such implementation across demographically diverse LEAs and schools, including diversity based on subgroups of students under section 1111(c)(2) of the Act, and student achievement. The plan must also include annual benchmarks toward achieving high-quality and consistent implementation across LEAs that are, as a group, demographically similar to the State as a whole during the demonstration authority period, using the demographics of LEAs initially participating as a baseline.

(b) *Prior experience, capacity, and stakeholder support.* (1) The extent and depth of prior experience that the SEA, including each SEA in a consortium, and its LEAs have in developing and implementing the components of the innovative assessment system. An SEA may also describe the prior experience of any external partners that will be participating in or supporting its demonstration authority in implementing those components. In evaluating the extent and depth of prior experience, the Secretary considers—

(i) The success and track record of efforts to implement innovative assessments or innovative assessment items aligned to the challenging State academic standards under section 1111(b)(1) of the Act in LEAs planning to participate; and

(ii) The SEA's or LEA's development or use of—

(A) Effective supports and appropriate accommodations consistent with section 1111(b)(2) of the Act for administering innovative assessments to all students, including English learners and children with disabilities, which must include professional development for school staff on providing such accommodations;

(B) Effective and high-quality supports for school staff to implement innovative assessments and innovative assessment items, including professional development; and

(C) Standardized and calibrated scoring rubrics for innovative assessments, with documented evidence of the validity, reliability, and comparability of determinations of student mastery or proficiency on the assessments.

(2) The extent and depth of SEA, including each SEA in a consortium, and LEA capacity to implement the innovative assessment system considering the availability of technological infrastructure; State and local laws; dedicated and sufficient staff, expertise, and resources; and other relevant factors. An SEA or consortium may also describe how it plans to enhance its capacity by collaborating with external partners that will be participating in or supporting its demonstration authority. In evaluating the extent and depth of capacity, the Secretary considers—

(i) The SEA's analysis of how capacity influenced the success of prior efforts to develop and implement innovative assessments or innovative assessment items; and

(ii) The strategies the SEA is using, or will use, to mitigate risks, including those identified in its analysis, and support successful implementation of the innovative assessment.

(3) The extent and depth of State and local support for the application for demonstration authority in each SEA, including each SEA in a consortium, as demonstrated by signatures from the following:

(i) Superintendents (or equivalent) of LEAs, including LEAs participating in the first year of the demonstration authority period.

(ii) Presidents of local school boards (or equivalent, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iii) Local teacher organizations (including labor organizations, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iv) Other affected stakeholders, such as parent organizations, civil rights organizations, and business organizations.

(c) *Timeline and budget.* The quality of the SEA's or consortium's timeline and budget for implementing innovative assessment demonstration authority. In determining the quality of the timeline and budget, the Secretary considers—

(1) The extent to which the timeline reasonably demonstrates that each SEA will implement the system statewide by the end of the requested demonstration authority period, including a description of—

(i) The activities to occur in each year of the requested demonstration authority period;

(ii) The parties responsible for each activity; and

(iii) If applicable, how a consortium's member SEAs will implement activities at different paces and how the consortium will implement interdependent activities, so long as each SEA begins using the innovative assessment in the same school year consistent with § 200.76(b)(1); and

(2) The adequacy of the project budget for the duration of the requested demonstration authority period, including Federal, State, local, and non-public sources of funds to support and sustain, as applicable, the activities in the timeline under paragraph (c)(1) of this section, including—

(i) How the budget will be sufficient to meet the expected costs at each phase of the SEA's planned expansion of its innovative assessment system; and

(ii) The degree to which funding in the project budget is contingent upon future appropriations action at the State or local level or additional commitments from non-public sources of funds.

(d) *Supports for educators and students.* The quality of the supports that the SEA or consortium will provide to educators and students to enable successful implementation of the innovative assessment system and improve instruction and student outcomes. In determining the quality of supports, the Secretary considers—

(1) The extent to which the SEA or consortium has developed, provided, and will continue to provide training to LEA and school staff, including teachers, principals, and other school leaders, that will familiarize them with the innovative assessment system;

(2) The strategies the SEA or consortium has developed and will use to familiarize students with the innovative assessment system;

(3) The strategies the SEA will use to ensure that all students and each subgroup of students under section 1111(c)(2) of the Act in participating schools receive the support, including appropriate accommodations consistent with section 1111(b)(2) of the Act, needed to meet the challenging State academic standards under section 1111(b)(1) of the Act; and

(4) If the system includes assessment items that are developed or scored by teachers or other school staff, the strategies (*e.g.*, templates, prototypes, test blueprints, scoring tools, rubrics, audit plans) the SEA or consortium has developed, or plans to develop, to validly and reliably score such items, including how the strategies engage and support teachers and other staff in developing and scoring high-quality assessments and how the SEA will use effective professional development to aid in these efforts, to help ensure unbiased, objective scoring of assessment items.

(e) *Evaluation and continuous improvement.* The quality of the SEA's or consortium's plan to annually evaluate its implementation of innovative assessment demonstration authority. In determining the quality of the evaluation, the Secretary considers—

(1) The strength of the proposed evaluation of the innovative assessment system included in the application, including whether the evaluation will be conducted by an independent, experienced third party, and the likelihood that the evaluation will sufficiently determine the system's validity, reliability, and comparability to the statewide assessment system consistent with the requirements of § 200.77(b)(4) and (9); and

(2) The SEA's or consortium's plan for continuous improvement of the innovative assessment system, including its process for—

(i) Using data, feedback, evaluation results, and other information from participating LEAs and schools to make changes to improve the quality of the innovative assessment; and

(ii) Evaluating and monitoring implementation of the innovative assessment system in participating LEAs and schools annually.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e–3)

■ 6. Section 200.79 is revised to read as follows:

§ 200.79 Transition to statewide use.

(a)(1) After an SEA has scaled its innovative assessment system to operate statewide in all schools and LEAs in the State, the SEA must submit evidence for peer review under section 1111(a)(4) of the Act to determine whether the system may be used for purposes of both academic assessments and the State accountability system under section 1111(b)(2) and (c) of the Act.

(2) An SEA may only use the innovative assessment system for the purposes described in paragraph (a)(1) of this section if the Secretary determines that the system is of high quality consistent with paragraph (b) of this section.

(b) Through the peer review process of State assessments and accountability systems under section 1111(a)(4) of the Act, the Secretary determines that the innovative assessment system is of high quality if—

(1) An innovative assessment developed in any grade or subject under section 1111(b)(2)(B)(v) of the Act—

(i) Meets all of the requirements under section 1111(b)(2) of the Act and § 200.77(b) and (c);

(ii) Provides coherent and timely information about student achievement based on the challenging State academic standards under section 1111(b)(1) of the Act;

(iii) Includes objective measurements of academic achievement, knowledge, and skills; and

(iv) Is valid, reliable, and consistent with relevant, nationally recognized professional and technical standards;

(2) The SEA provides satisfactory evidence that it has examined the statistical relationship between student performance on the innovative assessment in each subject area and student performance on other measures of success, including the measures used for each relevant grade-span within the remaining indicators (*i.e.*, indicators besides Academic Achievement) in the statewide accountability system under section 1111(c)(4)(B) of the Act, and how the inclusion of the innovative assessment in its Academic Achievement indicator affects the annual meaningful differentiation of schools;

(3) The SEA has solicited information, consistent with the requirements under

§ 200.77(d)(3)(iv), and taken into account feedback from teachers, principals, other school leaders, parents, and other stakeholders under § 200.77(a)(2)(i) through (v) about their satisfaction with the innovative assessment system; and

(4) The SEA has demonstrated that the same innovative assessment system was used to measure—

(i) The achievement of all students and each subgroup of students under section 1111(c)(2) of the Act, and that appropriate accommodations were provided consistent with section 1111(b)(2) of the Act; and

(ii) For purposes of the State accountability system consistent with section 1111(c)(4)(E) of the Act, progress on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act of at least 95 percent of all students, and 95 percent of students in each subgroup of students under section 1111(c)(2) of the Act.

(c) With respect to the evidence submitted to the Secretary to make the determination described in paragraph (b)(2) of this section, the baseline year for any evaluation is the first year, as applicable, that each LEA in the State administered the innovative assessment system.

(d) In the case of a consortium of SEAs, evidence may be submitted for the consortium as a whole so long as the evidence demonstrates how each member SEA meets each requirement of paragraph (b) of this section applicable to an SEA.

(Authority: 20 U.S.C. 6311(a); 20 U.S.C. 6364; 20 U.S.C. 1221e–3)

■ 7. Section 200.80 is revised to read as follows:

§ 200.80 Extension, waivers, and withdrawal of authority.

(a) *Extension.* (1) The Secretary may extend an SEA's demonstration authority period for no more than two years if the SEA submits to the Secretary—

(i) Evidence that its innovative assessment system continues to meet the requirements under § 200.77 and the SEA continues to implement the plan described in its application in response to the selection criteria in § 200.78 in all participating schools and LEAs;

(ii) A high-quality plan, including input from stakeholders under § 200.77(a)(2)(i) through (v), for transitioning to statewide use of the innovative assessment system by the end of the extension period; and

(iii) A demonstration that the SEA and all LEAs that are not yet fully implementing the innovative assessment system have sufficient capacity to support use of the system statewide by the end of the extension period.

(2) In the case of a consortium of SEAs, the Secretary may extend the demonstration authority period for the consortium as a whole or for an individual member SEA.

(b) *Withdrawal of demonstration authority.* (1) The Secretary may withdraw the innovative assessment demonstration authority provided to an SEA, including an individual SEA member of a consortium, if at any time during the approved demonstration authority period or extension period, the Secretary requests, and the SEA does not present in a timely manner—

(i) A high-quality plan, including input from stakeholders under § 200.77(a)(2)(i) through (v), to transition to full statewide use of the innovative assessment system by the end of its approved demonstration authority period or extension period, as applicable; or

(ii) Evidence that—

(A) The innovative assessment system meets all requirements under § 200.77, including a demonstration that the innovative assessment system has met the requirements under § 200.77(b);

(B) The SEA continues to implement the plan described in its application in response to the selection criteria in § 200.78;

(C) The innovative assessment system includes and is used to assess all students attending schools participating in the demonstration authority, consistent with the requirements under section 1111(b)(2) of the Act to provide for participation in State assessments, including among each subgroup of students as defined in section 1111(c)(2) of the Act, and for appropriate accommodations;

(D) The innovative assessment system provides an unbiased, rational, and consistent determination of progress toward the State's long-term goals and measurements of interim progress under section 1111(c)(4)(A) of the Act for all students and subgroups of students under section 1111(c)(2) of the Act and a comparable measure of student performance on the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act for participating schools relative to schools that are not participating; or

(E) The innovative assessment system demonstrates comparability to the statewide assessments under section 1111(b)(2) of the Act in content coverage, difficulty, and quality.

(2)(i) In the case of a consortium of SEAs, the Secretary may withdraw innovative assessment demonstration authority for the consortium as a whole at any time during its demonstration authority period or extension period if the Secretary requests, and no member of the consortium provides, the information under paragraph (b)(1)(i) or (ii) of this section.

(ii) If innovative assessment demonstration authority for one or more SEAs in a consortium is withdrawn, the consortium may continue to implement the authority if it can demonstrate, in an amended application to the Secretary that, as a group, the remaining SEAs continue to meet all requirements and selection criteria in §§ 200.77 and 200.78.

(c) *Waiver authority.* (1) At the end of the extension period, an SEA that is not yet approved consistent with § 200.79 to implement its innovative assessment system statewide may request a waiver from the Secretary consistent with section 8401 of the Act to delay the withdrawal of authority under paragraph (b) of this section for the purpose of providing the SEA with the time necessary to receive approval to transition to use of the innovative assessment system statewide under § 200.79(b).

(2) The Secretary may grant to an SEA a one-year waiver to continue innovative assessment demonstration authority, if the SEA submits, in its request under paragraph (c)(1) of this section, evidence satisfactory to the Secretary that it—

(i) Has met all of the requirements under paragraph (b)(1) of this section and of §§ 200.77 and 200.78; and

(ii) Has a high-quality plan, including input from stakeholders under § 200.77(a)(2)(i) through (v), for transition to statewide use of the innovative assessment system, including peer review consistent with § 200.79, in a reasonable period of time.

(3) In the case of a consortium of SEAs, the Secretary may grant a one-year waiver consistent with paragraph (c)(1) of this section for the consortium as a whole or for individual member SEAs, as necessary.

(d) *Return to the statewide assessment system.* If the Secretary withdraws innovative assessment demonstration authority consistent with paragraph (b) of this section, or if an SEA voluntarily terminates use of its innovative assessment system prior to the end of its demonstration authority, extension, or waiver period under paragraph (c) of this section, as applicable, the SEA must—

(1) Return to using, in all LEAs and schools in the State, a statewide assessment that meets the requirements of section 1111(b)(2) of the Act; and

(2) Provide timely notice to all participating LEAs and schools of the withdrawal of authority and the SEA's plan for transition back to use of a statewide assessment.

(Authority: 20 U.S.C. 6364; 20 U.S.C. 1221e–3)

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